

**AGENDA**  
**McCall City Council**  
**SPECIAL MEETING**  
**May 27, 2011 at 11:00 a.m.**  
**McCall City Hall (Lower Level)**  
**Legion Hall**  
**216 East Park Street**

The times listed are estimated times only. The Council reserves the right to alter the times as necessary.

**WORK SESSION**

**11:00 a.m.** AB 11-98 McCall Parasail Concession Agreement

**11:15 a.m.** AB 11-94 Snow Removal Work Session

**12:50 p.m.** AB 11-99 McCall Avenue Land Lease Transfer Waiver Request

**1:00 p.m.** ADJOURNMENT

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, contact City Hall at 634-7142.

**McCALL CITY COUNCIL**

216 East Park Street

**AGENDA BILL**

McCall, Idaho 83638

**Number**

**AB 11-98**

**Meeting Date**

**May 27, 2011**

**AGENDA ITEM INFORMATION**

<b>SUBJECT:</b>  <i>McCall Parasail Concession Agreement</i>		<i>Department Approvals</i>	<i>Initials</i>	<i>Originator or Supporter</i>
		Mayor / Council		
		City Manager		
		Clerk		
		Treasurer		
		Community Development		
		Police department		
		Public Works		
		Golf Course		
<b>COST IMPACT:</b>	0	Parks and Recreation	DC	originator
<b>FUNDING SOURCE:</b>	City Parks and Recreation	Airport		
		Library		
<b>TIMELINE:</b>	Upon Passing	Information Systems		
		Grant Coordinator		

**SUMMARY STATEMENT:**  
 McCall Parasailing has requested a concession permit to conduct business on the City pump out dock. Mr. Mackaben has requested use of the docks for pick-up and drop-off of customers and over-night mooring of his boat. Mr. Mackaben submitted a similar request in July of 2010; however due to personal circumstances, Mr. Mackaben was unable to use his approved 2010 Concession Agreement. Staff recommends that the presented draft Use Agreement be considered by Council for the 2011 season.

Attachments:

- 2010-2011 Use Agreement Comparison (will be updated after the Parks and Recreation Committee meeting on May 25)
- Draft Use Agreement
- Exhibit A – Letter from Valley County Sheriff’s Office
- Exhibit B – Email from Mr. Mackaben giving a business overview
- Email from Mr. Mackaben detailing anticipated operations
- 2010 Agreement which was approved but never executed

**RECOMMENDED ACTION:**  
 The Parks and Recreation Committee will meet Wednesday May 25, 2011. A recommendation will be forthcoming from the Parks and Recreation Advisory Board.

**RECORD OF COUNCIL ACTION**

<b>MEETING DATE</b>	<b>ACTION</b>
<b>July 22, 2010</b>	<b>Council approved the concession agreement with McCall Parasail</b>

## 2010 – 2011 Parasail Concession Comparison

	<b>2010 Council Approved Concession Permit</b>	<b>Mr. Mackaben's 2011 Request</b>	<b>Staff 2011 Recommendation</b>	<b>Parks and Recreation Advisory Board 2011 Recommendation</b>
<b>Concession Fee</b>	\$250 per week of operation	\$200 per week of operation	\$2,400 for the season payable in lump sum prior to beginning season	
<b>Location</b>	Art Roberts Park, west dock	Pump out station dock	Pump out station dock, P&R Director to determine location not to interfere with other users of pump out	
<b>Overnight moorage</b>	No overnight moorage	Overnight moorage requested	No overnight moorage	
<b>Length of concession agreement</b>	One season only	Requesting through 2013 as long as no violations or infractions occur.	One season only, extension granted in fall after council and staff review.	

## USE AGREEMENT

THIS USE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 27 day of May, 2011, by and between the City of McCall, hereinafter referred to as "City", and Mac Mackaben (insert address), dba McCall Parasailing, hereinafter referred to as "Licensee".

WHEREAS, the City of McCall is the owner of the boat pump out dock on Payette Lake located in McCall, Idaho.

WHEREAS, on May 27, 2011 the McCall City Council approved limited use of the west boat pump out dock, from May 28, 2011 to September 5, 2011, subject to the terms of this agreement.

NOW, THEREFORE, City and Licensee, agree as follows:

1. The term of this Use Agreement shall be from May 28, 2011 to September 5, 2011.
2. Licensee agrees to follow the terms set out in Valley County Sherriff Department letter dated May 20, 2011 attached as Exhibit A and to comply with all applicable laws, including the McCall City Code, and agrees that its use of the pump out dock is nonexclusive and shall not interfere with any other public use.
3. Licensee shall maintain regular hours of operation which shall not begin earlier than 9:00 a.m. and shall end not later than 8:00 p.m. each day, Sunday through Saturday.
4. All instruction and safety awareness must be completed at Licensee's regular place of business not on City Docks.
5. No overnight moorage or storage of equipment is permitted at any City dock. Customers will be encouraged to park at the public parking lots in the downtown area.
6. All major repair work will be completed off city property.
7. Public has primary use of the boat launch ramp, docks and beaches.
8. No form of advertising will take place in any City Park.
9. All clothing worn by employees must clearly identify the individuals as employees of Licensee.
10. Licensee shall immediately provide the City of McCall a Certificate of Liability Insurance (ACORD Form 27) with the City added as an additional insured in an amount not less than \$1,000,000 per occurrence, and also agrees to indemnify and hold the City harmless from any and all claims arising out of Licensee's use of the City facilities and

designated dock area. Licensee shall not use the designated dock until the Certificate of Liability Insurance described herein has been provided to the City of McCall.

11. Nothing contained in this Agreement shall create any relationship between Licensee and the City as partners, joint venture, principal and agent, or employee and employer. This relationship is solely that of an independent user with permission for the non-exclusive use of the pump out dock.

12. Either party may terminate this Agreement upon 30 days written notice.

13. In the event Licensee breaches this agreement, City shall provide Licensee with written notice of the default, either delivered to Licensee at its registered office or mailed by regular first class mail to Licensee's address set forth above. In the event the default, in the sole discretion of City, constitutes a threat to the health, safety or welfare of City, its citizens, or Payette Lake, City may demand that Licensee immediately cease operations at all city facilities, which operations will not be allowed to resume unless, and until, the default is cured. For defaults not involving a threat to the health, safety, or welfare of City, its citizens, or Payette Lake, such default must be cured not later than five (5) days after personal delivery or mailing of the written notice. Failure to cure a default, or repeated defaults, of whatever nature, shall be grounds for termination of permission to use City property.

14. The negotiated fee for the Concession Agreement from May 28, 2011 through September 5, 2011 shall be \$2,400 per season, which sum must be paid prior to Licensee's commencement of operations, but in any event the first payment shall be due not later than May 31, 2011.

15. This Agreement authorizes Licensee to conduct commercial activities as described in Exhibit B, from the pump out dock.

16. The City reserves the right to relocate the licensee to another location within City-owned waterfront areas during the term of this agreement.

**CITY OF MCCALL**

**MCCALL PARASAIL**

\_\_\_\_\_  
Donald C. Bailey, Mayor

\_\_\_\_\_  
Mac Mackaben, Operator of McCall Parasail

ATTEST:                    [SEAL]

\_\_\_\_\_  
BessieJo Wagner, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Valley, )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me \_\_\_\_\_,  
personally appeared Donald C. Bailey and BessieJo Wagner, known or identified to me  
to be the Mayor and City Clerk of the City of McCall, that executed the said instrument,  
and acknowledged to me that such City of McCall executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
My Commission Expires on \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Valley )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2011, before me  
\_\_\_\_\_, personally appeared before me Mac Mckaben, McCall  
Parasail, known or identified to me to be the person whose name is subscribed to the  
within instrument and acknowledged to me that he executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
My Commission Expires on \_\_\_\_\_



## VALLEY COUNTY SHERIFF'S OFFICE

107 W. SPRING STREET  
P.O. BOX 1350  
CASCADE, ID 83611

TELEPHONE (208) 382-7150  
FAX (208) 382-7170  
DISPATCH FAX (208) 382-7171

TO: Mac McCavin  
FROM: Sgt. J. Speer, VCSO  
SUBJ: Parasailing on Payette Lake  
DATE: 5/20/1`

Mac,

Per our conversation I have prepared a list of items that you must comply/obey while operating your parasailing company on Payette Lake in McCall. First let me state that I am impressed with your attention to safety and look forward to having a positive working relationship with you and your employee's this boating season. I want to inform you that Sheriff Bolen takes safety very seriously and thus has charged her Marine Division with ensuring all vessels comply with the Boating Safety Act.

As far as your company: Your vessel will be equipped with two B II fire extinguishers. You will be required to have (2) Type IV (4) Throwable Flotation Devices, along with one wearable Coast Guard Approved PFD for every person aboard your vessels. The customers who are put on the parachute will have a Coast Guard Approved PFD on for the duration of the ride in the airspace above the vessel. Your vessel **will not** tow persons at sail through the area of the lake known as "The Narrows". This area is a well marked channel and is marked with USCG Approved Cans and Nuns. Your vessel **will not** tow persons within 500 feet of the marina or boat launch facilities to ensure there are no congestion problems. We also feel this will lessen the chance of a violation of navigation rules by other boaters thus increasing your safety. We also wish to remind you that Payette Lake is an area that is prone to high winds and sudden storms. There are also overhead power wires and underwater hazards in the lake. **Just because there are some markers out does not mean that all hazards have been marked.**

PATTI BOLEN  
SHERIFF



JOHN E. COOMBS  
CHIEF DEPUTY

We encourage you to purchase USGS charts of the area and note depths of the lake. You will also be required to comply with Idaho Code regarding the time limitations of towing persons.

Please feel free to contact me if you have any questions about this letter or the information contained therein. I would caution you of Valley County Ordinance 08-01. This document applies to Big Payette Lake which you will be operating on. You can view this document at <http://www.co.valley.id.us/commissioners/meetings.html>

Lastly, your vessels must undergo a **safety inspection prior to taking any passengers for hire.** If you fail to do this your permit will be voided and you will not be able to conduct operations on any body of water in Valley County. Your vessels will also submit to an inspection at anytime it is requested by a Sheriff's Office member.

The equipment listed above is designed to augment the required safety equipment required by the State of Idaho and the USCG. With that said you must also be in compliance with those directives as well.

Thanks for your attention to this matter,

Jason R. Speer, Sgt  
Recreation Safety  
Valley County Sheriff's Office



**BessieJo Wagner**

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**From:** Dennis Coyle  
**Sent:** Tuesday, May 24, 2011 1:32 PM  
**To:** BessieJo Wagner  
**Subject:** FW: 2011 McCall Parasail Proposal / Business overveiw

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**From:** Nate Mackaben [<mailto:nathanjustin@yahoo.com>]  
**Sent:** Friday, May 20, 2011 8:59 AM  
**To:** Dennis Coyle  
**Subject:** 2011 McCall Parasail Proposal / Business overveiw

At McCall Parasail either Go by yourself or bring a friend or go tandem! No experience necessary for this activity.

Hours: we parasail every hour from 9:00a.m to 8:00p.m(weather permitting).

Ok so how does it work? We harness you into the parachute, which basically feels like you are sitting on a swing. We operate a hydraulic winch system, which means flyers take off and land directly from the back of the boat. Flyers are winched out into the air from the deck, and then winched back in after eight minutes of flight. Flyers can be dipped in the water if they would like. However, no needs to wear a bathing suit, as you do not get wet if you don't want too. Others waiting to fly will ride along in the boat and wait their turn to parasail.

Length of ride: Each flyer is in the air for eight minutes and usually out on the lake for up to an hour, depending on the number of flyers in that given boat. We are allowed to take up to 6 flyers out on the boat at the same time: a rule which we strictly enforce.

Price-per-flyer: \$65 per solo ride, \$90 per tandem ride.

Souvenirs: we will take photographs of you parasailing, which can be purchased upon your return to the dock. We also have our signature t-shirts, tank-tops, and sweatshirts available for purchase

Restrictions: the weight of the flyer. Combine tandem flyers 250lbs to 350lbs. Single flyer 125lbs to 250lbs.

These same limits also apply to the single flyers and depend/vary directly with the weather.

Payment options: we accept cash, VISA, MasterCard, and Travelers checks.

## BessieJo Wagner

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**From:** Dennis Coyle  
**Sent:** Tuesday, May 24, 2011 1:32 PM  
**To:** BessieJo Wagner  
**Subject:** FW: 2011 Full detail of the anticipated operations involving the use of a parasail.

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**From:** Nate Mackaben [<mailto:nathanjustin@yahoo.com>]  
**Sent:** Friday, May 20, 2011 8:57 AM  
**To:** Dennis Coyle  
**Subject:** 2011 Full detail of the anticipated operations involving the use of a parasail.

This document details the anticipated operations of McCall Parasail for business activity in 2011.

It is important to note that in 2010, The McCall Parks and Recreation Advisory Board favorably recommended to the McCall City Council the granting of a concession permit to McCall Parasail with the following conditions:

- 1. That McCall Parasail adheres to the conditions outlined by Valley County Sheriff's Department as detailed in the letter dated May \_\_\_\_, 2011.*
  
- 2. That pick up and drop off of customers be limited to the pump station, if not, the use of the west dock at Art Roberts Park.*
  
- 3. That McCall Parasail carries the appropriate amount of liability insurance as dictated by ICRIMP and naming the City of McCall as co-insured.*
  
- 4. That a fee of \$200 per week of operation be paid to the City of McCall for use of the City facilities. This fee is asked to be dropped from \$250 in 2010 due to projected revenues impacted due to not operating for revenue until June 10, 2011.*
  
- 5. Overnight moorage be permitted at approved location by the City of McCall such as pump station or west dock at Art Roberts Park. In the event that any damage takes place to such location by McCall Parasail, all repairs will be paid by McCall Parasail.*
  
- 6. That the agreement be for the remainder of the season only. At the end of the operating season a review of the*

*operation and the permit be conducted. As long as no infractions or violations take place, McCall parasail asks the the City of McCall grants an extension through 2013. This would allow McCall Parasail to further invest back in to the McCall communittee.*

*7. That any fees collected be dedicated to future improvements of waterfront facilities.*

## Use Agreement

THE USE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this day of July the 14, 2010, by and between the City of McCall, here in after referred to as the "City" and Mac Mackaben, dba, McCall Parasailing, hereinafter referred to as Licensee.

Whereas, THE City of McCall is the owner of the Pump out Station and other piers in Payette Lake.

NOW, THEREFORE, City and Licensee, agree as follows:

1. The term of the Use Agreement shall be from July \_\_\_\_\_ to 9/30/2011.
2. Licensee agrees to follow the terms set out in Licensee's proposal to the extent and not inconsistent with the specific terms of this agreement, and to comply with all applicable laws including the McCall City code, and agrees that its use of the pump house station and other docks is non exclusive and shall not interfere with any other public use.
3. Licensee shall maintain regular hours of operation which shall not begin earlier than 9:00am and shall not operate no later than 8:0pm
4. All boat instruction and safety awareness will be on the Wind Walker ( boat).
5. At day's end the Wing Walker will be docked at the Pump House Station or off site location.
6. All major repair work will be completed off the city property
7. Wind Walker refueling will be done at the pump station or outside docks.
8. Licensee shall immediately provide the City of McCall a certified added as an additional insured in an amount not less than \_\_\_\_\_ per occurrence, and also agrees to indemnify and hold the City harmless from any and all claims of Licensee's use of the pump station and designated loading and unloading areas. Licensee shall not use pump station or other docks until Certificate of Liability Insurance described herein has been provided to the City of McCall.
9. Nothing contained in this Agreement shall create any relationship between Licensee and the City as partners, joint venture, principle and agent or employee and employer. This relationship is solely that of an independent user with permission for the non-exclusive use of the city pump out station and the city docks for the sole purpose of loading and unloading passengers on the Wind Walker. (Loading and unloading approximately 6-8 minutes) Maximum occupancy 6 Flyers each hour.
10. Either party may terminate this agreement upon 90 days written notice.
11. In the event licensee breaches this agreement, City shall provide licensee with written notice of the default, either delivered to licensee at its registered office or mailed by regular first class mail to licensee's address set forth above. In the event the default in the sole discretion of the city may demand that licensee immediately cease operations at the pump house station, which operations will not be allowed to resume unless, and until, the default is cured. For defaults not involving a threat to the health, safety, or welfare of City, its citizens, or Payette Lakes, such default must be cured not later than five (5) days after personal delivery or mailing of the written

notice. Failure to cure a default, or repeated defaults, of whatever nature, shall be grounds for termination of permission to use city property.

12. Due to the length of the remainder of the season McCall Parasailing would offer the City of McCall fair compensation for the use of their lake front facilities.

At McCall Parasail either Go by yourself or bring a friend or go tandem! No experience necessary for this activity.

Hours: we parasail every hour from 9:00a.m to 8:00p.m(weather permitting).

Ok so how does it work? We harness you into the parachute, which basically feels like you are sitting on a swing. We operate a hydraulic winch system, which means flyers take off and land directly from the back of the boat. Flyers are winched out into the air from the deck, and then winched back in after eight minutes of flight. Flyers can be dipped in the water if they would like. However, no needs to wear a bathing suit, as you do not get wet if you don't want too. Others waiting to fly will ride along in the boat and wait their turn to parasail.

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Souvenirs: we will take photographs of you parasailing, which can be purchased upon your return to the dock. We also have our signature t-shirts, tank-tops, and sweatshirts available for purchase.

Restrictions: the weight of the flyer. Combine tandem flyers 250lbs to 350lbs. Single flyer 125lbs to 250lbs. These same limits also apply to the single flyers and depend/vary directly with the weather.

Payment options: we accept cash, VISA, MasterCard, and Travelers checks.

**McCALL CITY COUNCIL**  
**AGENDA BILL**

216 East Park Street  
 McCall, Idaho 83638

**Number** AB 11-94  
**Meeting Date** May 27, 2011

**AGENDA ITEM INFORMATION**

<b>SUBJECT:</b>  <i>2010 – 2011 Snow Removal Report/Snow Removal Plan</i>	<i>Department Approvals</i>	<i>Initials</i>	<i>Originator or Supporter</i>
	Mayor / Council		
	City Manager		
	Clerk		
	Treasurer		
	Community Development		
	Police department		
	Public Works	PB	Originator
	Golf Course		
		Parks and Recreation	
<b>COST IMPACT:</b> N/A	Airport		
<b>FUNDING SOURCE:</b> N/A	Library		
<b>TIMELINE:</b> Upon Approval	Information Systems		
	Grant Coordinator		

**SUMMARY STATEMENT:**

Attached is the report on snow removal efforts for the 2010 – 2011 winter season. Included within the report are a number of policy issues that need to be reviewed with City Council. As part of the report there is a proposed plan to improve how snow is removed within the City of McCall. Public Works would also like to discuss with City Council several funding mechanisms for newer equipment as well.

**RECOMMENDED ACTION:**

Information only

**RECORD OF COUNCIL ACTION**

<b>MEETING DATE</b>	<b>ACTION</b>



**SNOW REMOVAL REPORT**  
**WINTER 2010 – 2011**



**prepared for:**

**City of McCall City Council**

**prepared by:**

**City of McCall**

**Public Works Department**

**May 23, 2011**

## WEATHER SUMMARY

The winter of 2010-2011 was one of marked contrast. The predictions for winter weather made by the National Weather Service last fall indicated a La Nina weather pattern would set up, which would produce a wetter and colder than normal winter season. The early part of the winter season seemed to indicate that trend. However, as the winter progressed it became apparent that the winter season would be occasioned by what is called “the Hawaiian Express”, a plume of moisture that comes out of the tropical Pacific. Several times during the winter, the “Hawaiian Express” provided for significant rain and slushy snow events.

The largest snow event was a prolonged storm that started about 5 AM on December 28<sup>th</sup> and continued well into December 29<sup>th</sup>. This particular storm produced about 27” of snow. There were several additional moderate snow events of more than 6” but less than 12” accumulation. Most of the snow events occurred during the night time hours.

The precipitation for the overall season was near normal. January and February were dry months marked by below normal precipitation, while March in particular was significantly wetter than normal. December, April and May were all slightly above to above normal in precipitation. By season’s end, this past winter McCall accumulated 165” of snow compared to 112” the year before.

Month	Number of Days with Measurable Precipitation	High Temp	Low Temp	Precipitation	Departure from Normal
Nov 2010	11	63	-18	1.79”	-1.41”
Dec 2010	19	41	-11	4.23”	0.78”
Jan 2011	14	41	-13	2.30”	-0.98”
Feb 2011	17	44	-16	1.66”	-1.26”
Mar 2011	25	45	6	4.68”	2.13”
Apr 2011	17	50	12	2.65”	0.58”
May 2011	7	72	22	1.51”	0.28”

2010 -2011 Snowfall = 165”

2009 – 2010 Snowfall = 112”

**SNOW REMOVAL EFFORTS**

Current City policy is for snow removal efforts to start when three inches (3”) of snow have accumulated at the City Shop on weekdays and four inches (4”) on weekends.

Base on this policy, this past season (2010 – 2011) the Street crew responded to twenty-two (22) snow events that required plowing. There was an additional Seventy-four (74) days required to provide additional clean-up which includes cutting snow floor, widening roads, etc. The previous season (2009 – 2010) the Street crew responded to twenty (20) snow events but only thirty-five (35) additional days were required for additional clean-up.

Based upon the snow removal efforts expended this past winter, Public Works spent \$44,353 in fuel. A total of 12,592 gallons of diesel were used. The average price of diesel rose from \$3.69 per gallon to \$4.40 per gallon during the snow plow season which is an approximate 20% increase. Snow removal efforts of the past two seasons have been put into tabular form for your review.

<b>WINTER 2010 - 2011</b>				
Month	Number of Snow Plow Events	Labor Hours	Number of Clean-up Days	Labor Hours
Nov 2010	4	246	2	63
Dec 2010	8	540	16	369
Jan 2011	2	134	20	512
Feb 2011	2	137	16	228
Mar 2011	6	343	20	399
<b>TOTAL</b>	<b>22</b>	<b>1400</b>	<b>74</b>	<b>1571</b>

<b>WINTER 2009 - 2010</b>				
Month	Number of Snow Plow Events	Labor Hours	Number of Clean-up Days	Labor Hours
Nov 2009	0		0	
Dec 2009	6	353	6	105
Jan 2010	10	608	15	292
Feb 2010	3	171	11	279
Mar 2010	1	11	3	36
<b>TOTAL</b>	<b>20</b>	<b>1143</b>	<b>35</b>	<b>712</b>

## **SNOW REMOVAL ISSUES**

The Street crew faces several challenges in its snow removal program. These range from the ever present snow berms, parked vehicles and downtown parking conflicts, use of city right-of-way, adequate snow storage areas, downtown sidewalk snow removal conflicts, mailboxes and aging equipment. These will be described in more detail.

### Snow Berms

Current snow removal practice simply leaves snow berms across all driveways and street crossings. These berms will vary in height and width depending on both the depth of the snow event as well as the consistency of the snowfall. For example, a powder snow of even a light accumulation will leave a moderate snow berm which can be easily removed by shovel or snow blower. Compare that to a wet, slushy, heavy snow that at a depth of even 4" to 6" can leave snow berms 2 to 3 feet high and even wider. These berms are difficult to remove for most homeowners without the aid of heavy equipment. More problematic is that under most snow events, the Street crew can typically arrive at a homeowner's property at a fairly consistent time. The homeowner then schedules their time or arranges for a snow removal contractor to remove snow from their driveway including the snow berm at a certain time during the day. Then during a more adverse snow event, it takes our street crews a longer period of time to get to the same residence. By this time the homeowner or their contractor has removed all of the snow with its attendant berm and then the Street crew comes in and leaves a new berm.

Additionally, the street crews go out and do clean-up after a snow event. They cut the snow floor on the street or they widen the roads. Doing so then leaves another berm typically on a sunny day when it is not snowing and the homeowner is not expecting to remove any additional snow berm.

### Parked Vehicles and Downtown Parking Issues

Parked vehicles are problematic in that the street crews cannot properly plow the streets. In addition, under heavy snow events, the parked vehicle becomes a major safety issue. If a major snow event occurs during the daytime, parked cars in the downtown area become even more

problematic. A good example of this was the December 28/29 storm event. This storm started about 5 AM. By midmorning there was enough significant accumulation so that it became difficult to both park cars as well as trying to get cars out from the curb line.

### Use of Right-Of-Way

Under City ordinance, no one is allowed to remove snow from private property and place it into the travel way of the public streets. Placing snow from private property onto City right-of-way is a little less clear based upon discussions with the City Attorney.

#### 8-5-030: DEPOSIT ON RIGHT OF WAY PROHIBITED:

(A) Snow, Ice, Or Debris On Public Rights Of Way Prohibited: It is unlawful for any person to deposit, or cause to be deposited, thrown upon or moved onto any public street, sidewalk, public right of way, thoroughfare, or other public property, any snow, ice, dirt, rocks or debris which has accumulated on private property and which creates an obstruction thereon. For purposes of this Section "obstruction" shall mean any impediment to the passage of vehicles beyond that presented by the weather and road conditions without such impediment.

There are many instances where snow removal contractors take snow from private property and place it onto city right-of-way but not necessarily into the travel ways of the street. This does several things. One, it reduces the amount of snow storage available to the street crew. Two, snow placed within the right-of-way then ends up back as berms in other residents driveways as crews conduct clean-up operations. Lastly, Public Works is unaware of who is removing snow where within the City. When complaints arise stemming from snow removal efforts by private contractors, the City does not know who to contact to resolve those issues.

### Adequate Snow Storage

It is important that the City develop a strategic long range plan for providing for adequate snow storage areas in and around the downtown area. A brief study was conducted several years ago to look at the feasibility of removing snow from downtown and hauling it to areas outside of the downtown area. The cost of such a plan was well over \$500,000. This cost did not include

normal snow removal operations as well as the additional equipment and manpower needed during a snow event.

### Downtown Sidewalk Snow Removal Conflicts

This issue revolves around the timing of when the street crew removes snow in the downtown area (usually between 4 and 7 AM) and when business/property owners remove snow (typically the remainder of the day). By 7 AM, when the Street crew is finished in the downtown area and the streets are cleared from curb line to curb line. By the time business/property owners are finished clearing off the snow from their sidewalks, it looks as if our street crew never removed snow in the downtown area. Typically, the business/property owner in the downtown area removes snow from the sidewalks and then they place that snow within the parking zones of the streets. Vehicles that frequent downtown businesses pack that snow and that packed snow becomes difficult for the street crew to remove entirely. That snow eventually becomes ice along the curb line.

#### 8-5-010: MAINTENANCE OF SIDEWALKS:

(A) As used in this Section, these words shall be defined as follows:

**REMOVE:** To eliminate when feasible, and when not, to apply sand, or ice-treatment compounds which abate the slippery condition and eliminate as it becomes feasible.

**SIDEWALK:** A path for pedestrians, usually paved, along the side of a street, including also gravel and dirt walking paths commonly used by the public along the side of a street.

(B) The owners, tenants or occupants of lands in the City of McCall which either abut or are located on the site of any of the following described sidewalks shall remove all snow, rubbish or ice from the same within twenty four (24) hours after the occurrence of said condition:

1. Any sidewalk in an area zoned Central Business;
2. Any paved sidewalk in any area zoned Commercial, or General Commercial; and

3. Any paved sidewalk except where the City Manager determines in consultation with the Recreation Director that the snow cover should be left for purposes of winter recreation, such as cross-country skiing.

### Mailboxes

Mailboxes are becoming more of an issue each year. More and more residents are asking to place mailboxes at their residences instead of obtaining a post office box at the Post Office. To meet United States Postal Service regulations, these mailboxes are required to be within reach of the mail carrier vehicle which would be well within the street right-of-way. The mailboxes are then in the path of the cities snow removal equipment and on occasion become damaged.

### Aging Equipment

Simply put, the City owned equipment is old, inefficient, costly to maintain and hard on the equipment operators. Every winter season, the city leases additional equipment to aid in snow removal and then in April the best equipment is then returned to the equipment supplier. The street crews then have to try and maintain the city streets with the existing, aging equipment.

## **WHERE DO WE GO FROM HERE**

### What other communities are doing

Public Works in preparation for this report and presentation researched a number of similar communities. In addition, the Street Superintendent and the Public Works Director attended the 2011 North American Snow Show held in Spokane, Washington. They were many things learned and many ideas were exchanged amongst the many snow removal personnel from across the United States and from other countries as well. Some ideas include in addition to typical snow removal activities are a) prioritized snow removal routes, b) snow emergency routes, c) snow melting, d) snow storage facilities, e) chemical de-icing programs.

Several of those communities are listed below:

City	Pop.	Snowfall	Snow Removal Priority Plan	Miles of Road	Number of Employees	Equipment	Snowgates
McCall	2,992	134"	No	44	9	(2) Graders (4) Loaders (3) Snow Plows	No
Sandpoint	6,835	70"	Yes	55	10 6-8 Pr. Op	(2) Graders (1) Loader (4) Snow Plows (1) Snow Blowers (1) Skid Steer	No
Coeur d' Alene	44,137	68"	Yes	250	17	(4) Graders (4) Loaders (5) Snow Plows (2) Sanders (4) De-icer Trucks	Yes
Ketchum	3,003	119"	Yes	32	12	(2) Graders (4) Loader (3) Snow Plows (2) Snow Blowers	No
Bozeman	37,280	86"	Yes	200	10	(4) Graders (1) Loader (6) Snow Plows	Yes
Whitefish	5,032	69"	Yes	62	10	(1) Graders (3) Loader (6) Snow Plows (1) Skid Steer	Yes
South Lake Tahoe	27,609	201"	Yes	130	37		Yes
Truckee	13,864	202"	Yes	145	25	(2) Graders (8) Loaders (10) Snow Plows (3) Sanders (6) De-icer Trucks	No
Mt. Shasta	3,624	103"	No	50	10	(7) Snow Plows	No
Aspen	5,804	137"	Yes	20	12	(4) Graders (2) Loader (2) Snow Plows	No



## Community Expectations

What are the community expectations within the City of McCall? Are these expectations realistic? Do they make sense? Are they financially viable?

The number one complaint that Public Works received during the winter season is snow berms. Both the severity of the berms as well as the timing of when berms are placed across driveways. The number two complaint that Public Works receives is when snow is removed from the sidewalks in the downtown area and is then placed into the parking zones in the downtown business district.

## **EXISTING SNOW REMOVAL PLAN**

### Existing Snow Removal Plan

The existing snow removal plan is straight forward and simple. Currently the City has 44 miles of paved and unpaved roads. The total mileage of city streets is then divided by the number of Street crew employees and that is how many miles of streets each operator is responsible for. Each operator is responsible for about five (5) miles of road. Under a light to moderate snow event, all of the snow on City streets can be removed in a typical 8 to 9 hour shift. This plan is based solely on removing all of the snow that has accumulated in one eight-hour (8) shift as quickly and in the most fuel efficient manner as possible.

The current plan does not take into account a prolonged, continuing snow event. It also does not address continuing snow removal and clean-up efforts needed in the downtown business district. The plan also does not take into account the additional concrete curb & gutter that has been placed in the Urban Renewal District. Snow removal in these areas is not handled well by the large heavy snow removal equipment that is currently being used and in fact leads to increased damage of the curb and gutter.

### Manpower and Equipment Needs for Existing Plan

The existing City snow removal plan requires nine (9) fulltime equipment operators operating nine (9) pieces of snow removal equipment. Our existing snow removal fleet is supplemented for five (5) months by the leasing of three (3) pieces of equipment. These are two (2) loaders and one (1) grader. The full complement of equipment that is used by the Street crew is four (4) loaders, two (2) graders and three (3) snow plow trucks. Each of the graders has an additional wing for stepping back the snow. Under this plan, the Street Superintendent would also be required to be involved in snow removal operations for the entire day. This creates problems in that he is not available to address complaints and service related issues.

### **PROPOSED SNOW REMOVAL PLAN**

#### Proposed Snow Removal Plan

Public Works is proposing a major change in how the Street crew removes snow. This new plan would create a priority system based upon importance of areas or streets. Public Works is proposing four levels of priority. The first level priority would be the downtown area and arterials. The second level priority would be the school and McCall Transit bus routes. The third level priority would be the subdivision streets and the fourth level priority would be all of the remaining dead end or cul-de-sac streets. This plan then affords the Street crew the flexibility under major snow events to return to the higher level priority areas or streets before moving into the subdivisions. Public Works is also proposing that the City remove snow from the sidewalks in the downtown business area prior to the plowing of downtown streets.

#### Manpower and Equipment Needs for Proposed Plan

In order to accomplish the proposed snow removal plan, one additional employee during the winter would be required. This would bring the Street crew up to 10 fulltime employees between November 1 and March 31.

Then the question arises as to how to provide more equipment for the additional employee.

After reviewing this situation Public Works is proposing that the Street crew be split into two crews and to run two shifts. This would in effect reduce the equipment requirement nearly in half. The AM shift would be responsible for the Priority 1 and 2 streets and the PM shift would be responsible for Priority 3 and 4 streets. Under prolonged snow events, the PM shift can also return to Priority 1 and 2 streets before efforts are made to remove snow in the subdivision areas. This plan would also only require the Street Superintendent to be involved in snow removal efforts for about two (2) to three (3) hours. The Street Superintendent would then be free to handle individual complaints and service related issues.

Based upon this proposal, the existing snow removal equipment is inadequate. The equipment is simply too old and has accumulated too many hours to handle operation sixteen (16) hours a day. After reviewing the proposed plan it was determined that Public Works needs the following heavy equipment to adequately plow all of the city streets:

- (4) Loaders equipped with quick connect attachment points
- (2) Graders with extendable wings
- (1) De-icer truck
- (1) Skid steer with blower attachment
- (1) Plow truck with sander

#### Integration with Road Maintenance Program

The current practice of leasing winter snow removal equipment solves a temporary problem in addressing the equipment needs during the winter season. However the down side to this is that the Street crew is then left using old equipment to do necessary and needed maintenance on City streets during the remainder of the year. It is important to implement a full fleet maintenance/management program in which equipment is rotated on a regular basis. Standards for this are 10 years/10,000 hours for heavy equipment and 10 years/120,000 miles for light equipment such as trucks. Deviations from this can be made on a case by case basis

depending on the type of equipment, the hours or miles placed upon that equipment, the severity of use as well as the maintenance history.

## **SUPPORT STRUCTURE**

There are some key pieces to running a successful snow removal program. The possible tools would include the following:

- a. Snow Emergency Ordinance
- b. On Street Parking Ordinance & Enforcement
- c. Snow Berm Ordinance
- d. ROW Ordinance
- e. Mailbox Ordinance
- f. Registering Snow Removal Contractors

Many cities and towns have adopted strict ordinances to aid in the removal of snow, especially in key areas and streets. Snow emergency ordinances are designed to prohibit parking during major snow events to aid in snow removal efforts. In conjunction with snow emergency ordinances, many communities and cities that deal with snow adopt strict parking ordinances. There are also other ordinances that can be adopted to strengthen city policy such as snow berms, what can and cannot be done within the city rights-of-ways and the location of mailboxes.

A key component that Public Works feels would go a long way to reducing complaints would be to register snow removal contractors. As part of their registration, we would know who the contractors are, where they are working and what the rules and regulations within the city are concerning snow removal.

## **FINANCING OPTIONS**

There are a number of financing options available to the City of McCall. These options were discussed with the City Attorney and some of them should meet with the requirements of the

“Frazier” decision. These options are listed below and will be discussed in much greater detail during the presentation:

- a. Purchase outright
- b. Straight lease
- c. Lease with secondary agreement for option to buy through equipment company
- d. General Obligation Bond
- e. Supplemental Levy

**McCALL CITY COUNCIL**

216 East Park Street

**AGENDA BILL**

McCall, Idaho 83638

**Number**

**AB 11-99**

**Meeting Date**

**May 27, 2011**

**AGENDA ITEM INFORMATION**

<b>SUBJECT:</b>  <i>McCall Avenue Land Lease Transfer Waiver Request</i>		<i>Department Approvals</i>	<i>Initials</i>	<i>Originator or Supporter</i>
		Mayor / Council		
		City Manager		
		Clerk	<i>AW</i>	Originator
		Treasurer		
		Community Development		
		Police department		
		Public Works		
		Golf Course		
		Parks and Recreation		
<b>COST IMPACT:</b>	\$2500	Airport		
<b>FUNDING SOURCE:</b>	Lessee	Library		
<b>TIMELINE:</b>	Sale closing June 15, 2011	Information Systems		
		Grant Coordinator		

**SUMMARY STATEMENT:**  
 The City of McCall owns land on McCall Avenue which was developed for community housing. The land is governed by the Amended Restated Ground Lease V2. The lease specifies that if a buyer qualifies for the credit/subsidy as defined in Section Three of the land lease then their rent is \$1 a year, otherwise the buyer is required to pay rent equal to 5% of the fair market value of the home. Also under Section Three of the land lease it states that the lessee, upon the sale of the home, shall pay a lease transfer fee of \$2,500.00. This fee may be reduced or waived if, in the sole discretion of the City, such transfer fee would constitute a hardship upon the Lessee. The lessee, Brad Kraushaar, of Lot 4, 1543 McCall Ave is requesting that the transfer fee be waived. Mr. Kraushaar, a qualified buyer, purchased the home in 2009 for \$125,000 and is now selling the home for \$120,000.

The pending sale is contingent on this waiver, and if the waiver is granted a lease assignment will come before Council on June 9, 2011. The new purchaser is also a qualified buyer.

Attachments:

- Letter from Mike Maciaszek – Realtor
- Amended Restated Ground Lease V2

**RECOMMENDED ACTION:**  
 Direct staff to draft a letter approving the waiver of the \$2500 transfer fee and authorize the Mayor to sign all necessary documents.

**RECORD OF COUNCIL ACTION**

<b>MEETING DATE</b>	<b>ACTION</b>



208-634-2100  
208-634-3719 Fax  
www.McCallRealEstate.com

May 20, 2011

To: The City of McCall,  
Attention: City Council  
From: Mike Maciaszek, McCall Real Estate Company, on behalf of Bradley Kraushaar  
Re: Amended and Restated Ground Lease V2 Lot 4, Block 3 aka 1543 McCall Ave

City Council:

This letter is to inform you that Bradley Kraushaar has entered into an accepted contract for the sale of his home located at 1543 McCall Avenue, a property subject to the Amended and Restated Ground Lease V2 (Lot 4, Block 3).

Regarding Section Three, page 5 of the lease agreement, lessee Bradley Kraushaar has recently lost his job with the City of McCall, and is currently unemployed and without income. He has met the criteria as a qualified person set out in Section One of the lease throughout his ownership of this property. In addition, the current market value has decreased \$6,000 on the McCall Avenue homes since he purchased in November of 2009.

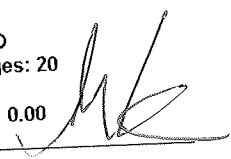
In order for Bradley Kraushaar to close on the sale of his home it is necessary that the lease transfer fee of \$2,500 be waived, which is at the sole discretion of the Lessor per the lease, as this transfer fee constitutes hardship upon the Lessee. With the \$2,500 transfer fee waived, Bradley is still going to be required to bring approximately \$5,000 to closing.

Your consideration in this regard is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Maciaszek". The signature is written in a cursive, flowing style.

Mike Maciaszek, McCall Real Estate Company



**Recording Requested By and  
When Recorded Return to:**

**City of McCall  
216 E. Park Street  
McCall, Idaho 83638**

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**AMENDED AND RESTATED GROUND LEASE V2  
(LOT 4, BLOCK 3)**

This Amended and Restated Ground Lease is made this 27 day of August, 2009 (the “**date hereof**”) between the City of McCall, Idaho an Idaho municipal corporation organized and existing under the laws of Idaho, having its principal office at 216 E. Park St., McCall, Idaho 83638 (“**Lessor**”), and Neighborhood Housing Services, Inc., a non-profit corporation organized and existing under the laws of Idaho, having its principal office at 1401 Shoreline Drive, Boise, Idaho 83707 (“**Lessee**”).

Upon recordation of this fully executed and notarized Lease, the following documents shall be null and void and of no further force or effect:

- Community Housing Covenants Running with the Land, recorded October 6, 2006 as Instrument No. 314092; recorded June 11, 2007 as instrument No. 322186; and recorded November 26, 2008 as instrument No. 336918
- Ground Lease, as amended, recorded October 6, 2006 as Instrument No. 314101; recorded December 29, 2006 as Instrument No. 316933; and recorded May 23, 2007 as Instrument No. 321617.
- First Amendment to Ground Lease, recorded November 26, 2008 as Instrument No. 336924.
- Amended and Restated Ground Lease recorded July 31, 2009 as Instrument No. 343907.

Whereas, rising land prices and construction costs have made housing unaffordable to many people that work in essential public employment such as public safety officers and other public employees who safeguard the health, safety and welfare of McCall and the surrounding communities; and

Whereas, the lack of affordable housing has made it difficult, if not impossible, for public agencies to hire and retain such public employees as are needed to provide essential public services; and

Whereas, the same housing costs affect the ability of the private sector to hire and retain employees in the retail and construction trades, which adversely affects small and local businesses; and

Whereas, the inability to find affordable housing has caused a shortage of health care workers which in turn has resulted in a reduction in health care services in McCall, including at



least one assisted living facility which had to close resulting in moving long time McCall residents who can no longer live independently to a facility in Gem County; and

Whereas, the City of McCall has established a community/workforce housing policy and has adopted ordinances to put such policy into effect; and

Whereas, leasing land to Lessee will facilitate the construction of affordable housing which will begin to address the shortage of affordable housing in McCall and will improve the health, safety, and welfare of the citizens and visitors to McCall.

Now, therefore, the parties agree as follows:

### **SECTION ONE. DEMISE, DESCRIPTION, AND USE OF PREMISES**

Lessor leases to Lessee and Lessee leases from Lessor, for the purpose of using in and on the Premises, defined below, community/workforce housing and, except for as provided further herein, for no other purpose, that certain real property, situated in McCall, Valley County, Idaho, and more particularly described in the exhibit attached to and made a part of this Lease as **Exhibit 1** (the “**Real Property**”). As used in this Lease, the term “**Premises**” refers to the Real Property and to any and all appurtenances to and improvements located on the Real Property from time to time during the term of this Lease. Use and/or occupancy of the Premises as housing by person(s) not qualified to rent community/workforce housing, as provided further herein, shall be permitted so long as Lessee pays Additional Rent defined below.

A. Qualified Persons. To qualify for and be eligible to lease the Real Property without having to pay additional annual rent equal to five percent (5%) of the value of the Real Property, at least one member of the household residing in the Premises must, at all times, meet the following criteria and evidence of the following must be provided to Lessor:

1. Employment and/or residency in Valley and/or Adams Counties. At least one non-dependent member of the household must meet one of the following criteria:

- a. Be a full-time employee (that is, a person who is employed on the basis of a minimum of 1,500 hours worked per calendar year) working in Valley and/or Adams Counties; OR
- b. Be a senior person (that is, sixty-five [65] years or older); OR
- c. Be a disabled person (that is, a person who meets the definition of such under the Social Security Administration regulations); OR
- d. Be the former spouse of any such employee; senior, or disabled person, or a dependent thereof who had been living in the Premises with that qualified employee, senior, or disabled person.

2. The household shall occupy the unit as its primary residence which is defined as the residence within which the occupants reside not less than nine months out of each calendar year and evidenced by voter registration, hunting or fishing license or other evidence of residency.

B. Qualified Local Employers, defined below, are recognized as important partners in the creation and ownership of community/workforce housing. A qualified Local Employer may purchase the Premises for use as rental housing for such qualified Local Employer's employee(s) without having to pay Additional Rent.

1. To qualify as a ("Local Employer"), an application with evidence of the following must be provided to Lessor:

- a. The Local Employer must have offices and/or employees who work in Valley and/or Adams Counties.
- b. The Local Employer must provide evidence that any and all potential occupants of the Premises are or shall be employees (including dependents of said employee(s)) of that Local Employer who are also working in Valley or Adams Counties. The Local Employer must provide evidence that at least one non-dependent resident is currently employed by that Local Employer.

2. For such Local Employer's employee(s) to remain eligible to reside on the Premises, the following provisions apply:

- a. Maximum occupancy standards are not being violated (a maximum of 2 persons per bedroom) are allowed to reside in the Premises.
- b. The Premises are being maintained to acceptable standards by the Local Employer or the Local Employer's managing agent, including, without limitation, having well-maintained yards/open space and complying with health and safety standards concerning the habitability of the Premises. Lessor will spot check and request inspections of the Premises on an as-needed basis. Additionally, Local Employer shall respond to a complaint by neighbors or residents concerning the upkeep and maintenance of the Premises within a 72 hour period.
- c. Not more than three individuals who are not related by affinity or consanguinity may reside on the Premises.

C. To remain eligible to reside on the Premises without having to pay additional annual rent equal to five percent (5%) of the value of the Real Property, the Lessee must meet the criteria set forth in Section 1(A) or 1(B) above.

## SECTION TWO. TERM

The term of this Lease shall be for ninety-six (96) years, commencing on the date hereof, and ending on September 30, 2106.

## SECTION THREE. RENT

Lessee shall pay annual rent equal to five percent (5%) of the fair market value of the Real Property (the "Annual Rent"), payable in twelve (12) equal monthly installments, which Annual Rent shall be adjusted as provided further herein. For the purposes of this initial term, the fair market value of the Real Property is \$22,000; therefore the annual rent is \$1,100.00. Notwithstanding anything to the contrary herein, such Annual Rent shall be due and owing only during any period of time during the term of this Lease that the Lessee does not qualify for the credit/subsidy set out below for Lessee(s) meeting the criteria set forth in Section 1(A) or 1(B) above.

Lessor and Lessee shall determine and adjust the Annual Rent according to the "fair market value" of the Real Property upon the following events: the transfer of this Lease, or every five (5) years after the date of a transfer of this Lease. The "fair market value" of the Real Property shall mean the cash price which a purchaser would pay for the Real Property, such valuation to be made on the assumption that the Real Property is not subject to any agreements, including, without limitation, leases, and management and service agreements then in effect.

Provided, however, that so long as Lessee meets the definition of a qualified person as set forth in Section One above, such Lessee shall qualify for a credit/subsidy against the Annual Rent set out above and the annual rent for the term of the Lease shall be reduced to \$1.00 per year (the "**Annual Rent after credit/subsidy**"), which Lessee shall pay to Lessor, without deduction or offset, at the place or places as may be designated from time to time by Lessor.

Upon transfer of this Lease to a new assignee, or after five years after the beginning of this Lease or five years after a previous determination of fair market value, upon notice from either party to the other party Lessor and Lessee shall first attempt to agree upon the fair market value of the Real Property. In the event Lessor and Lessee are unable to agree upon the fair market value of the Real Property within ten (10) days of the date of such notice, Lessor and Lessee shall then attempt to agree upon the choice of a licensed Idaho real estate broker who works in the McCall area to provide a determination of the fair market value of the Real Property, which value shall be binding on the parties. In the event Lessor and Lessee are unable to agree upon the choice of a licensed Idaho real estate broker within a further ten (10) days, Lessor and Lessee shall then attempt to agree upon the selection of three (3) disinterested appraisers. If Lessor and Lessee are unable to agree upon the selection of three (3) appraisers within a further ten (10) days, then a petition may be made by either Lessor or Lessee to a court of competent jurisdiction for such selection of three (3) appraisers. Lessor and Lessee shall each have the right to submit the names of up to three (3) appraisers to the Court. Each appraiser so selected shall furnish Lessor and Lessee with a written appraisal within thirty (30) days of such appraiser's selection, setting forth such appraiser's determination of the fair market value of the Real Property as of the date the appraisal procedure of this Section is instituted. The average of the two closest valuations of such appraisers shall be treated as the fair market value of the Real Property and

the determination shall be final and binding on Lessor and Lessee. All costs associated with obtaining the fair market value of the Real Property shall be divided equally by Lessor and Lessee.

Lessee further agrees, for itself, its successors and assigns, that upon assignment of this Lease to a subsequent purchaser of the Premises, Lessee shall pay to Lessor a lease transfer fee of \$2,500.00. This fee may be reduced or waived if, in the sole discretion of the Lessor, such transfer fee would constitute a hardship upon the Lessee. Lessor shall use the criteria developed for reduction of utility charges as a beginning point for determination whether Lessee qualifies for a complete or partial reduction in the transfer fee. Other factors to be considered will include, but not be limited to: whether Lessee meets the criteria as a qualified person set out in Section One of this Lease, the sale price of the improvements compared to the original purchase price and cost of other improvements, and total household income.

Annual Rent, Annual Rent after credit/subsidy, and any other sums due under this Lease are sometimes collectively and individually referred to herein as “**Rent.**”

#### **SECTION FOUR. WARRANTIES OF TITLE AND QUIET POSSESSION**

Lessor covenants that Lessor is seized of the Real Property in fee simple and has full right to make and enter into this Lease and that Lessee shall have quiet and peaceable possession of the Premises during the term of this Lease.

#### **SECTION FIVE. DELIVERY OF POSSESSION**

If Lessor, for any reason whatever, cannot deliver possession of the Real Property to Lessee at the commencement of the term of the Lease, as specified above, this Lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting from such nondelivery; but in that event, there shall be a proportionate reduction of Annual Rent and Additional Rent, if applicable, covering the period between the commencement of this Lease term and the time when Lessor can deliver possession.

#### **SECTION SIX. USES PROHIBITED**

Lessee shall not use, or permit the Premises, or any part of the Premises, to be used for any purpose or purposes other than the purpose or purposes for which the Premises are leased under this Lease. No use shall be made or permitted to be made of the Premises, or acts done, which will cause a cancellation of any insurance policy covering any building located on the Premises, or any part of such building, nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any article that may be prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost, comply with all requirements, pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease, covering any building and appurtenances at any time located on the Premises.

## **SECTION SEVEN. WASTE AND NUISANCE PROHIBITED**

During the term of this Lease, Lessee shall comply with all applicable laws affecting the Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Real Property. Lessee shall not commit, or suffer to be committed, any waste on the Premises, or any nuisance. Lessee shall maintain all landscaping including removal of noxious weeds, mowing grass, trimming trees, irrigating plants as necessary, all to maintain the Premises to keep the same clean, free from debris, and generally in the same condition as other similar properties in McCall.

## **SECTION EIGHT. ABANDONMENT OF PREMISES**

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned and, at the option of Lessor, take possession of such property pursuant to applicable legal process.

## **SECTION NINE. LESSOR'S RIGHT OF ENTRY**

Lessee shall permit Lessor and the agents and employees of Lessor to enter into and on the Premises at all reasonable times for the purpose of inspecting the Premises, or for the purpose of posting notices of nonresponsibility for alterations, additions, or repairs, without any rebate of Rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises occasioned by the entry. Lessee shall permit Lessor and its agents and employees, at any time within the last year prior to the expiration of this Lease, to place on the Premises any usual or ordinary "To Let" or "To Lease" signs and exhibit the Premises to prospective tenants at reasonable hours.

## **SECTION TEN. ENCUMBRANCE OF LESSEE'S LEASEHOLD INTEREST**

A. Lessee may encumber by a purchase money mortgage or deed of trust, or other proper instrument, its leasehold interest and estate in the Premises, together with all buildings and improvements placed by Lessee on the Real Property, as security for any indebtedness of Lessee incurred in purchase of the leasehold improvements. The execution of any mortgage, or deed of trust, or other instrument, or the foreclosure of any mortgage, or deed of trust, or other instrument, or any sale, either by judicial proceedings or by virtue of any power reserved in a mortgage or deed of trust, or conveyance by Lessee to the holder of the indebtedness, or the exercising of any right, power, or privilege reserved in any mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions of this Lease, or as an assumption by the holder of the indebtedness personally of the obligations of this Lease. No encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability under this Lease.

B. If Lessee shall encumber its leasehold interest and estate in the Premises and if Lessee or the holder of the indebtedness secured by the encumbrance shall give notice to Lessor of the existence of the encumbrance and the address of the holder, then Lessor will mail or deliver to the holder, at such address, a duplicate copy of all notices in writing which Lessor may, from time to time, give to or serve on Lessee under and pursuant to the terms and provisions of this Lease. The copies shall be mailed or delivered to the holder at, or as near as possible to, the same time the notices are given to or served on Lessee. The holder may, at its option, at any time before the rights of Lessee shall be terminated as provided in this Lease, pay any of the Rent due under this Lease, or pay any taxes and assessments, or do any other act or thing required of Lessee by the terms of this Lease, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of this Lease or to prevent the termination of this Lease. All payments so made and all things so done and performed by the holder shall be as effective to prevent a foreclosure of the rights of Lessee as if done and performed by Lessee.

C. Any holder of an encumbrance of Lessee's leasehold interest shall have the right to bid at a foreclosure sale or to accept voluntary conveyance of Lessee's interest in lieu of foreclosure. Any purchaser at such foreclosure sale, or transferee of Lessee's interest voluntarily surrendered to the holder of an encumbrance, shall take such leasehold interest subject to the terms herein. Upon sale at foreclosure, or upon acceptance of voluntary conveyance of Lessee's interest in lieu of foreclosure, the purchaser at sale, or the transferee, as the case may be, shall pay to Lessor any accrued and unpaid Rent due at the date of foreclosure sale or acceptance of a deed in lieu of foreclosure.

D. Notwithstanding any other provision of this Lease to the contrary, in the event that a holder of an encumbrance of Lessee's leasehold interest forecloses such interest or receives a voluntary surrender of such interest, the Annual Rent shall be abated during the period of time that such lender is in possession and title to the leasehold interest and the Premises are unoccupied. Further, upon transfer of the Premises to a third party, the transfer fee set forth in Section Three above shall be waived in total.

#### **SECTION ELEVEN. SUBLETTING AND ASSIGNMENT**

Lessee may sublet the Premises in whole or in part without Lessor's consent, but the making of any sublease shall not release Lessee from, or otherwise affect in any manner, any of Lessee's obligations under this Lease. Lessee shall not assign or transfer this Lease, or any interest in this Lease, without the prior, express, and written consent of Lessor, and one consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Lessor agrees to not unreasonably withhold consent to assignment, and further agrees that assignment of the leasehold interest to an assignee that has qualified to use the Premises as community/workforce housing as provided further in Section One above, shall be presumed acceptable to Lessor and for which no written consent will be required. Except as provided immediately above, any assignment without consent shall be void and shall, at the option of Lessor, terminate this Lease. Except as provided in Section Ten above, neither this Lease nor the leasehold estate of Lessee nor any interest of Lessee under this Lease in the Premises or any buildings or improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment,

levies or charges are made by any municipal or political subdivision. If the right is given to pay either in one sum or in installments, Lessee may elect either mode of payment and its election shall be binding on Lessor. If, by making any such election to pay in installments, any of the installments shall be payable after the termination of this Lease, the unpaid installments shall be prorated as of the date of termination, and amounts payable after that date shall be paid by Lessor. All of the taxes and charges under this Section shall be prorated at the commencement and expiration of the term of this Lease.

C. Contesting taxes. If Lessee shall, in good faith, desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed in this Section to be paid by Lessee, Lessee shall be permitted to do so, and to defer payment of such tax or charge, the validity or amount of which Lessee is so contesting, until final determination of the contest, on giving to Lessor written notice prior to the commencement of any such contest, which shall be at least sixty (60) days prior to delinquency, and on protecting Lessor on demand by a good and sufficient surety bond against any such tax, levy, assessment, rate, or governmental charge, and from any costs, liability, or damage arising out of any such contest.

D. Disposition of rebates. All rebates on account of any taxes, rates, levies, charges, or assessments required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, and Lessor will, on the request of Lessee, execute any receipts, assignments, or other documents that may be necessary to secure the recovery of any rebates, and will pay over to Lessee any rebates that may be received by Lessor.

E. Receipts. Lessee shall obtain and deliver receipts or duplicate receipts for all taxes, assessments, and other items required under this Lease to be paid by Lessee, promptly on payment of any such taxes, assessments, and other items.

#### **SECTION FOURTEEN. ALTERATIONS**

Alterations, improvements, and changes permitted. Lessee shall have the right to make such alterations, improvements, and changes to any building that may, from time to time, be on the Premises as Lessee may deem necessary, or to replace any building with a new one of at least equal value, provided that prior to making any structural alterations, improvements, or changes, or to replacing any building, Lessee shall obtain Lessor's written approval of the plans and specifications, which approval Lessor shall not unreasonably withhold, provided that the value of the building shall not be diminished and the structural integrity of the building shall not be adversely affected by any such alterations, improvements, or changes, or that any proposed new building is at least equal in value to the one that it is to replace, as the case may be. In the event of disapproval, Lessor shall give to Lessee an itemized statement of reasons for the disapproval. If Lessor does not disapprove the plans and specifications provided for in this Section within thirty (30) days after they have been submitted to Lessor, the plans and specifications shall be deemed to have been approved by Lessor. Lessee will in no event make any alterations, improvements, or other changes of any kind to any building on the Premises that will decrease the value of the building, or that will adversely affect the structural integrity of the building. Lessor has the right but not the obligation to post the Premises with appropriate notices of Lessor's non-responsibility.

transfer, or sale by operation of law in any manner whatever. Any such attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease. An assignment of this Lease for security purposes in connection with the purchase of the improvements built on the Premises shall not require prior written consent provided that such assignment for security purposes shall be expressly subject to the terms hereof. Upon consent to an assignment, the assignee shall succeed to the interest of the Lessee, and all references herein to Lessee shall apply to such assignee.

## **SECTION TWELVE. NOTICES**

A. All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

To Lessor:           City of McCall  
                          216 E. Park St.  
                          McCall, ID 83638

To Lessee:           Neighborhood Housing Services, Inc.  
                          1401 Shoreline Drive  
                          Boise, ID 83707

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by the party as above provided.

## **SECTION THIRTEEN. TAXES AND ASSESSMENTS**

A. Taxes as further Rent. As further Rent under this Lease, Lessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatever, including all governmental charges of whatever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge on or against the Premises, or any part of the Premises, the leasehold of Lessee in and under this Lease, any building or buildings, or any other improvements now or later on the Premises, or on or against Lessee's estate created by this Lease that may be a subject of taxation, or on or against Lessor by reason of its ownership of the fee underlying this Lease, during the entire term of this Lease, excepting only those taxes specifically excepted below.

B. Assessments affecting improvements. Specifically and without in any way limiting the generality of the provisions of paragraph A of this Section, Lessee shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements, and shall pay the same in cash as they shall fall due and before they shall become delinquent and as required by the act and proceedings under which any such assessments or



Disposition of improvements. Any building constructed on the Premises, and all alterations, improvements, changes, or additions made in or to the Premises shall be the property of Lessee, and Lessee shall have a leasehold interest in them, subject to the terms of this Lease.

#### **SECTION FIFTEEN. REPAIRS AND DESTRUCTION OF IMPROVEMENTS**

A. Maintenance of improvements. Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the Premises, including all buildings and improvements of every kind that may be a part of the Premises, and all appurtenances to the Premises, in good, sanitary, and neat order, condition and repair, and, except as specifically provided in this Lease, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatever.

B. No obligation by Lessor to make improvements. Lessor shall not be obligated to make any repairs, replacements, or renewals, of any kind, nature, or description, to the Premises.

C. Lessee's compliance with laws. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on or any activity or condition on or in the Premises.

D. Damage to and destruction of improvements. The damage, destruction, or partial destruction of any building or other improvement that is a part of the Premises shall not release Lessee from any obligation under this Lease. In case of damage to or destruction of any such building or improvement, Lessee shall, at its own expense, promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering damage or destruction shall be made available to Lessee for repair or replacement.

#### **SECTION SIXTEEN. UTILITIES**

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the Premises throughout the term of this Lease, and all other costs and expenses of every kind whatever of or in connection with the use, operation, and maintenance of the Premises and all activities conducted on the Premises, and Lessor shall have no responsibility of any kind for any such utilities.

#### **SECTION SEVENTEEN. LIENS**

A. Lessee's duty to keep Premises free of liens. Lessee shall keep all and every part of the Premises and all buildings and other improvements at any time located on the Premises free and clear of any and all mechanics', material suppliers', and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee, any alteration, improvement, or repairs or additions that Lessee may make or permit or cause to be made, or any work or construction, by, for, or permitted by Lessee on or about the Premises, or any obligations of any kind incurred by Lessee, and at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based, and to indemnify Lessor and all of the

Premises and all buildings and improvements on the Premises from and against any and all such liens and claims of liens and suits or other proceedings pertaining to the Premises.

B. Contesting liens. If Lessee desires to contest any lien, it shall notify Lessor of its intention to do so within thirty (30) days after the filing of the lien. In that case, and provided that Lessee shall, on demand, protect Lessor by a good and sufficient surety bond against any lien and any cost, liability, or damage arising out of such contest, Lessee shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any lien shall not, in any case, be delayed until execution is had on any judgment rendered on the lien, and such delay shall be a default of Lessee under this Lease.

C. Indemnification. In the event of any such contest, Lessee shall protect and indemnify Lessor against any and all loss, expense, and damage resulting from the contest.

#### **SECTION EIGHTEEN. INDEMNIFICATION OF LESSOR**

Lessor shall not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by Lessee or by any person who may at any time be using or occupying or visiting the Premises or be in, on, or about the Premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, subtenant, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as, or of a different kind than, the matters or things above set forth. Lessee shall indemnify Lessor against any and all claims, liability, loss, or damage whatever on account of any such loss, injury, death, or damage. Lessee waives all claims against Lessor for damages to the building and improvements that are now on or later placed or built on the Premises and to the property of Lessee in, on, or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. The two preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of Lessor, its agents, or employees.

Notwithstanding the foregoing, in the event that any agency of the government of the United States of America succeeds to the interest of a Lessee by foreclosure or voluntary surrender of the leasehold interest, or otherwise, any provision herein that is contrary to federal law or regulation shall be null and void and is unenforceable, and failure to meet the terms of this section shall not, under those circumstances constitute a default herein.

#### **SECTION NINETEEN. ATTORNEY'S FEES**

If any action at law or in equity shall be brought to recover any Rent under this Lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

## **SECTION TWENTY. REDELIVERY OF REAL PROPERTY**

Lessee shall pay the Rent in the amounts, at the times, and in the manner provided in this Lease, and shall keep and perform all the terms and conditions on its part to be kept and performed. At the expiration or earlier termination of this Lease, Lessee shall peaceably and quietly quit and surrender to Lessor the Real Property in good order and condition subject to the other provisions of this Lease. In the event of the nonperformance by Lessee of any of the covenants of Lessee undertaken in this Lease, this Lease may be terminated as provided elsewhere in this Lease.

## **SECTION TWENTY-ONE. REMEDIES CUMULATIVE**

All remedies conferred on Lessor in this Lease shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

## **SECTION TWENTY-TWO. INSURANCE**

A. Insurance coverage of Premises. Lessee shall, at all times during the term of this Lease and at Lessee's sole expense, keep all improvements that are now or later a part of the Premises insured against loss or damage by fire and the extended coverage hazards the full replacement value of the improvements, with loss payable to Lessor and Lessee as their interests may appear. Any loss adjustment shall require the written consent of both Lessor and Lessee.

B. Personal injury liability insurance. Lessee shall maintain in effect throughout the term of this Lease personal injury liability insurance covering the Premises and its appurtenances and the sidewalks fronting on them in the amount equal to the Idaho Tort Claim limits now in effect or hereafter amended. Such insurance shall specifically insure Lessee against all liability assumed by it under this Lease, as well as liability imposed by law, and shall insure both Lessor and Lessee but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for Lessor and Lessee.

C. Lessor's right to pay premiums on behalf of Lessee. All of the policies of insurance referred to in this Section shall be written in a form satisfactory to Lessor and by insurance companies satisfactory to Lessor. Lessee shall pay all of the premiums for insurance and deliver policies, or certificates of policies, to Lessor. In the event of the failure of Lessee, either to effect insurance in the names called for in this Lease or to pay the premiums for the insurance or to deliver the policies, or certificates of the policies, to Lessor, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums for the insurance, which premiums shall be repayable to Lessor with the next installment of Rent. Failure to repay the same shall carry with it the same consequence as failure to pay any installment of Rent. Each insurer mentioned in this Section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give to Lessor thirty (30) days' written notice before the policy or policies in question shall be altered or canceled. Lessor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Lessee.

D. Definition of full replacement value. The term "full replacement value" of improvements, as used in this Lease, shall mean the actual replacement cost of the improvements from time to time less exclusions provided in the normal fire insurance policy.

E. Cost of insurance deemed further Rent. The cost of insurance required to be carried by Lessee in this Section shall be deemed to be further Rent under this Lease.

F. Notwithstanding the foregoing, in the event that any agency of the government of the United States of America succeeds to the interest of a Lessee by foreclosure or voluntary surrender of the leasehold interest, or otherwise, any provision herein that is contrary to federal law or regulation shall be null and void and is unenforceable, and failure to meet the terms of this section shall not, under those circumstances constitute a default herein.

### **SECTION TWENTY-THREE. PROHIBITION OF INVOLUNTARY ASSIGNMENT; EFFECT OF BANKRUPTCY OR INSOLVENCY**

A. Prohibition of involuntary assignment. Neither this Lease nor the leasehold estate of Lessee nor any interest of Lessee under this Lease in the Premises or in the building or improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatever (except through statutory merger or consolidation, or devise, or intestate succession, excepting foreclosure or voluntary relinquishment in lieu of foreclosure as set forth at Section Ten above); any attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

B. Effect of bankruptcy. Without limiting the generality of the provisions of the preceding paragraph A of this Section, Lessee agrees that if any proceedings under applicable federal bankruptcy laws be commenced by or against Lessee, and, if against Lessee, the proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement, or plan or reorganization, or if Lessee is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which Lessee is a party, with authority to take possession or control of the Premises or the business conducted on the Premises by Lessee, and such receiver is not discharged within a period of thirty (30) days after his or her appointment, any such event or any involuntary assignment prohibited by the provisions of the preceding paragraph A of this Section shall be deemed to constitute a breach of this Lease by Lessee and shall, at the election of Lessor, but not otherwise, without notice or entry or other action of Lessor, terminate this Lease and also all rights of Lessee under this Lease and in and to the Premises and also all rights of any and all persons claiming under Lessee.

### **SECTION TWENTY-FOUR. NOTICE OF DEFAULT**

A. Except as to the provisions of Sections Eleven and Twenty-Three of this Lease, Lessee shall not be deemed to be in default under this Lease in the payment of Rent or in the furnishing of any insurance policy when required in this Lease unless Lessor shall first give to Lessee thirty (30) days' written notice of the default and Lessee fails to cure the default within thirty (30) days.

B. Except as to the provisions or events referred to in the preceding paragraph of this Section, Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee thirty (30) days' written notice of the default, and Lessee fails to cure the default within the thirty (30) day period, or, if the default is of such a nature that it cannot be cured within thirty (30) days, Lessee fails to commence to cure the default within the period of thirty (30) days or fails to proceed to the curing of the default with all possible diligence.

#### **SECTION TWENTY-FIVE. DEFAULT**

In the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of reentry and may remove all persons and property from the Premises. The property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Lessee. Should Lessor elect to reenter, as provided in this Lease, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease or it may from time to time, without terminating this Lease, relet the Premises or any part of the Premises for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and on such other terms and conditions as Lessor in the sole discretion of Lessor may deem advisable with the right to make alterations and repairs to the Premises. On each reletting: (a) Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than Rent due under this Lease, the reasonable expenses of reletting and of making such alterations and repairs, incurred by Lessor; or (b) at the option of Lessor, rents received by Lessor from reletting shall be applied, first, to the payment of any expenses of reletting and of making alterations and repairs; and second, to the payment of Rent due and unpaid under this Lease, and the residue, if any, shall be held by Lessor and applied in payment of future Rent as it may become due and payable under this Lease. If Lessee has been credited with any rent to be received by reletting under option (a), above, and the rent was not promptly paid to Lessor by the new tenant, or if the rentals received from the reletting under option (b), above, during any month is less than that to be paid during that month by Lessee under this lease agreement, Lessee shall pay any deficiency to Lessor. The deficiency shall be calculated and paid monthly. No reentry or taking possession of the Premises by Lessor shall be construed as an election on the part of Lessor to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination of this Lease is decreed by a court of competent jurisdiction. In spite of any reletting without termination, Lessor may, at any subsequent time, elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the Real Property, and including the worth at the time of termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the Real Property for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

Notwithstanding the foregoing, in the event that Lessee's leasehold interest is subject to an encumbrance by the United States Department of Agriculture, Rural Development program, or similar loan program, Lessor agrees that Lessor will not terminate this Lease unless Lessor has provided advance written notice to said agency of Lessee's default not less than one hundred

twenty (120) days prior to such termination and such default remains uncured. Said agency may cure Lessee's default during the one hundred twenty (120) day period

In the event Lessor is in default under any of the terms of this Lease, Lessee shall provide written notice to Lessor specifying the nature of the default and giving Lessor not less than thirty (30) days in which to cure such default. If Lessor fails to cure the default within the time specified in the notice, Lessee shall be entitled to all remedies available to Lessee under Idaho law.

#### **SECTION TWENTY-SIX. LESSOR'S RIGHT TO PERFORM**

If Lessee, by failing or neglecting to do or perform any act or thing provided in this Lease by it to be done or performed, shall be in default under this Lease and such failure shall continue for a period of ten (10) days after written notice from Lessor specifying the nature of the act or thing to be done or performed, then Lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Premises for such purposes, if Lessor shall so elect), and Lessor shall not be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Lessee on account of that election. Lessee shall repay to Lessor on demand the entire expense incurred on account of the election, including compensation to the agents and employees of Lessor. Any act or thing done by Lessor pursuant to the provisions of this Section shall not be construed as a waiver of any such default by Lessee, or as a waiver of any covenant, term, or condition contained in this Lease, or of any other right or remedy of Lessor, under this Lease or otherwise. All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when they become due as in this Lease provided, shall bear interest from the date they become due until paid at the rate of twelve percent (12%) per annum, compounded annually.

#### **SECTION TWENTY-SEVEN. EFFECT OF EMINENT DOMAIN**

A. Effect of total condemnation. If the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of the taking, and Lessee shall then be released from any liability subsequently accruing under this Lease.

B. Effect of partial condemnation. If a portion of the Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by Lessee, or if the remainder of the property is not one undivided parcel of property, Lessee shall have the right to terminate this Lease as of the date of the taking on giving to Lessor written notice of termination within five (5) days after Lessor has notified Lessee in writing that the property has been so appropriated or taken.

C. If there is a partial taking and Lessee does not so terminate this Lease, then this Lease shall continue in full force and effect as to the part not taken, and the Rent to be paid by Lessee during the remainder of the term, subject to adjustment as provided in the rental adjustment provisions of Section Three of this Lease, shall be prorated.

D. Condemnation award. In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any such condemnation proceedings, Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the condemning or taking.

E. In the event of a partial taking of the Premises and this Lease is not terminated, then Lessee shall have the right to make claim against the condemning or taking authority for only the unamortized cost of the improvements placed on the Premises by Lessee and located on the Premises at the time of the taking or appropriation, which improvements shall be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending thirty (30) years after completion.

#### **SECTION TWENTY-EIGHT. SURRENDER OF LEASE**

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

#### **SECTION TWENTY-NINE. RIGHT OF FIRST REFUSAL AND EXTENSION OF LEASE TERM**

On termination of this Lease for any cause, or upon Lessee's entering into an agreement to sell any building or improvements, Lessor shall have a first right of refusal to purchase any building or improvements on the Premises; provided, however, notwithstanding anything to the contrary herein, except when the lease is terminated for Lessee's failure to timely cure any default, upon the end of the term of this Lease, as provided in Section Two above (including the termination of any renewals thereof), so long as Lessee is not in default under the terms of the Lease, then this Lease shall automatically renew for a successive term of 20 (twenty) years ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth in this Lease.

#### **SECTION THIRTY. TRANSFER OF SECURITY**

If any security is given by Lessee to secure the faithful performance of all or any of the covenants of this Lease on the part of Lessee, Lessor may transfer or deliver the security, as such, to the purchaser of the reversion, if the reversion be sold, and then Lessor shall be discharged from any further liability in reference to the security.

#### **SECTION THIRTY-ONE. WAIVER**

The waiver by Lessor of, or the failure of Lessor to take action with respect to, any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition contained in this Lease. The subsequent acceptance of Rent under this Lease by

Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of a preceding breach at the time of acceptance of Rent.

#### **SECTION THIRTY-TWO. EFFECT OF LESSEE'S HOLDING OVER**

Any holding over after the expiration of the term of this Lease, with the consent of Lessor, shall be construed to be a tenancy from month-to-month, at the same Rent as required to be paid by Lessee for the period immediately prior to the expiration of the term of this Lease, and shall otherwise be on the terms and conditions specified in this Lease, so far as applicable.

#### **SECTION THIRTY-THREE. PARTIES BOUND**

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this Lease. All of the parties shall be jointly and severally liable under this Lease.

#### **SECTION THIRTY-FOUR. TIME OF THE ESSENCE**

Time is of the essence of this Lease, and of every covenant, term, condition, and provision of this Lease.

#### **SECTION THIRTY-FIVE. SECTION CAPTIONS**

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

#### **SECTION THIRTY-SIX. GOVERNING LAW**

This Lease shall be governed by, construed, and enforced in accordance with the laws of Idaho.

#### **SECTION THIRTY-SEVEN. ENTIRE AGREEMENT**

This Lease shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

#### **SECTION THIRTY-EIGHT. MODIFICATION OF AGREEMENT**

Any modification of this Lease or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in a writing signed by each party or



an authorized representative of each party. In the event that Lessor amends or restates any ground lease it has on any other Greystone Village No. 3 parcel on McCall Avenue, Lessor shall give notice of the amendment or restatement to Lessee who shall then have sixty (60) days after said notice is mailed in which to decide whether to offer to amend this Lease to incorporate the same terms as the other amended or restated lease. If within that sixty (60) day period Lessee notifies Lessor in writing that Lessee offers to amend this Lease accordingly, then Lessor shall consent to such amendment or restatement and the same shall be reduced to writing, signed by the parties, and shall be recorded. In the event that Lessee does not make such offer to amend or restate within sixty (60) days after notice is mailed to Lessee, Lessee shall have no right to amend or restate this Lease unless Lessor, in its sole and absolute discretion, decides to accept such amendment or restatement.

Notwithstanding the foregoing, if the leasehold interest herein or any improvements built thereon are encumbered, no modification shall be effective unless, and until, approved in writing by the holder of such encumbrance.

**SECTION THIRTY-NINE. ADDITIONAL DOCUMENTS**

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Lease.

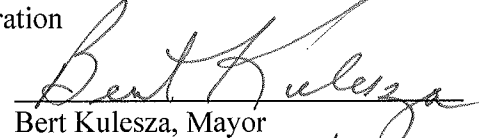
Each party to this Lease has caused it to be executed on the date hereof.

IN WITNESS WHEREOF, the parties hereto, having been duly authorized, execute this Amended and Restated Ground Lease on the date first written above.

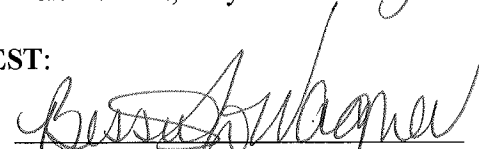
NEIGHBORHOOD HOUSING SERVICES,  
INC., an Idaho non-profit corporation

By:   
Connie Hogland, Chief Executive Officer

CITY OF MCCALL, an Idaho municipal  
corporation

By:   
Bert Kulesza, Mayor

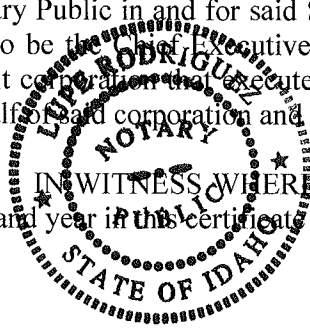
ATTEST:

By:   
BessieJo Wagner, City Clerk

STATE OF IDAHO, )  
 )ss  
County of Ada )

On this 28<sup>th</sup> day of August, 2009, before me, Lupe Rodriguez, a Notary Public in and for said State, personally appeared Connie Hogland known or identified to me to be the Executive Officer of Neighborhood Housing Services, Inc., an Idaho non-profit corporation that executed the instrument or the person that executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

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

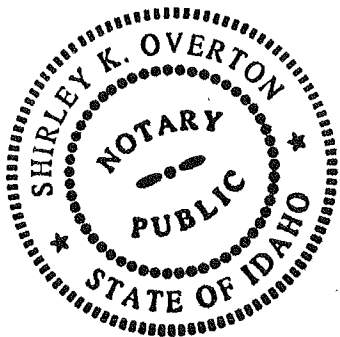


Lupe Rodriguez  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 7/18/2013

STATE OF IDAHO, )  
 )ss  
County of Valley )

On this 31 day of Aug, 2009, before me, Shirley K. Overton, a Notary Public in and for said State, personally appeared Bert Kulesza and BessieJo Wagner known or identified to me to be the Mayor and the City Clerk of the City of McCall, ID, respectively, the Idaho municipal corporation that executed the instrument or the person that executed the instrument on behalf of said municipal corporation, and the person who attested the Mayor's signature to the instrument, and acknowledged to me that such municipal corporation executed the same.

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



Shirley K. Overton  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 11-21-2014

**EXHIBIT 1  
LEGAL DESCRIPTION  
OF  
PROPERTY**

Lot 4, Block 3, Greystone Village No. 3, 1543 McCall Avenue, McCall, Valley County, Idaho, according to the official plat thereof, recorded July 31, 2006, as Instrument No. 311462, records of Valley County, Idaho.