



# CITY OF BILLINGS

THOMAS W. HANEL, MAYOR

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8296  
FAX (406) 657-8390

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March 25, 2013

Leslie Albright, President  
Billings Community Youth Foundation Inc.  
2933 Stinson Avenue  
Billings, MT 59102

Re: Assignment of Centennial Park Lease Dated June 23, 2003

Dear Ms. Albright:

The above-captioned lease Assignment to Billings Community Youth Foundation, Inc. (BCFYI) from Billings Amateur Hockey league was approved by the Billings City Council on June 23, 2003. The lease was intended to facilitate and assist in the funding and construction of an indoor hockey arena in the southeast corner of Centennial Park in west Billings. The executed original lease and subsequent assignment are both enclosed for your review and labeled as Exhibits 1 and 2.

Under the terms of the lease assumed by BCFYI, the group was required to do the following:

- (1) Pay a nominal annual rent of \$10 per year (Section 4 of the lease),
- (2) Keep the City Council informed of its fundraising status through periodic reports (Section 5 of the lease),
- (3) Make reasonable efforts to develop the facility contemplated in the lease ( Section 5),and
- (4) Provide proof of annual liability insurance covering the leased area naming the City of Billings as an additional insured. (Section 14).


Since the assignment was approved in June 2003, there is no record with the City Clerk or Parks, Recreation and Public Lands (PRPL) department indicating full compliance with any of these four provisions noted above. This brief letter and enclosures serve as formal notice that the Mayor and City Council are advising BCFYI that it is in default of the lease terms and has sixty (60) calendar days to bring itself into compliance with all provisions of the lease. BCFYI must include documented proof that the above four items have been complied with over the past ten (10) years since BCFYI assumed this lease and are current as of the date of this Notice. If proof of compliance by BCFYI is not provided by the end of sixty (60) calendar days beginning the date this letter was received Certified Return Receipt, then the City intends to terminate the lease and take possession of the applicable portion of Centennial Park as provided in Section 10 of the lease.

*Billings Pride:  
City-wide*

Please direct all future inquiries and questions about this matter to:

Thomas W. Hanel, Mayor  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

Very truly yours,

  
Thomas W. Hanel, Mayor

Enclosures

Cc:

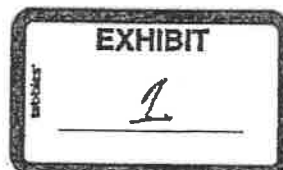
City Council  
Tina Volek, City Administrator  
Mike Whitaker, Director, PRPL  
Rick DeVore, Chair, Parks, Recreation and Cemetery Board  
Brent Brooks, City Attorney

## LEASE

This Lease Agreement is entered into this 8<sup>th</sup> day of May, 2000 by and between THE CITY OF BILLINGS, a Montana Municipal Corporation, by and through its duly constituted Park and Recreation Department, of Billings, Montana (the "City"), and THE BILLINGS AMATEUR HOCKEY LEAGUE, a non-profit corporation, of P.O. Box 71562, Billings, MT, 59104 (the "Association").

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. The City hereby leases to the Association, and the Association hereby leases from the City, the parcel of unimproved land consisting of approximately 8 acres, located on 32<sup>nd</sup> Street West and St. John's Avenue, in Billings, Montana, and more particularly described in the attached Exhibit A, which Lease shall be pursuant to the terms and conditions set forth herein (the "Premises"). The Association accepts the Premises in their "as is" condition.
2. The initial term of this Lease shall be for a period of 10 years commencing on the date hereof and ending on the 10<sup>th</sup> anniversary date of the commencement date.
3. Assuming that the Association is not, at the time of the exercise of its option, in breach of the terms of this Lease, the Association shall have successive options to extend this Lease for additional 10 year periods, on the same terms and conditions, which options shall be deemed to have been exercised by Association unless Association notifies City of its intent to terminate this Lease at the end of a term.
4. Rent during the term of this Lease shall be at a nominal rate of \$10 per year, payable in advance on the first day of each year of this Lease.
5. The Association intends to develop on the Premises a facility, which will include an indoor hockey arena, but which may, at the discretion of the Association, include other recreational uses and supporting uses such as a concession and retail store (the "Facility"). The Association is highly confident that it will over a period of time be able to raise sufficient funds to construct the Facility. The precise time frame for the raising of funds and the development of the facility is not known. Once funding is secured, the Association shall open up the Master Plan for Centennial Park for Public review and comment regarding the location and design of the Hockey Arena. The Association shall keep the City informed of its efforts and shall provide periodic progress reports to the City. The Association shall be deemed to be in compliance with this provision so long as the Association is making reasonable efforts to develop the Facility.



5. All costs associated with the development and construction of the Facility shall be borne by the Association. The City may provide in its budget such financial or other support as its consistent with its Charter and budgetary constraints. The Facility shall be constructed in compliance with all applicable city, and state building requirements. In addition, the Association shall be responsible for the payment of:
  - a. all taxes, if any, on the Premises or the Facility during the term of this Lease;
  - b. all utilities servicing the Premises or the Facility. The City shall, at no additional charge, turn on the irrigation lines to the Premises each year by May 1<sup>st</sup> and shall drain and disconnect the lines during the fall of each year;
  - c. all costs associated with the maintenance and repair of the Facility.
7. Notwithstanding the terms of the preceding section, the City shall maintain the Premises consistent with the maintenance practices in effect from time to time, pertaining to City parks.
8. Upon construction, the operation of the Facility shall be subject to the exclusive control of the Association. Moreover, the Facility shall not be used in any manner which would discriminate against any person on the basis of sex, marital status, age, physical or mental handicap, race, creed religion, color or national origin.
9. The City shall have the right to schedule events at the Facility, upon not less than 30 days' written request, but shall be obligated to pay the standard fee imposed by the Association for use of the Facility, and the Association agrees to cooperate with the City in scheduling such events. The Association may reject the City's request based on prior commitments or extraordinary circumstances, and the reasons for the rejection shall be set forth in writing.
10. In the event the Association should default in the performance of any covenant or condition of this Lease (including the payment of any rental installment due hereunder) and such default is not cured or removed within sixty (60) days after service of written notice of default upon the Association, then in any such events, the City shall have the right and option to terminate this Lease, to re-enter the leased premises, to evict the Association and to remove the Association's possessions, all without being deemed guilty of any trespass, and without prejudice to any claim by the City for damages for breach of covenant or for arrears of rent. Upon termination of this Lease, the Facility shall revert to and become the property of the City.

11. In the event either party resorts to judicial proceedings to enforce any rights under this Lease or to obtain relief for the breach of any covenants hereof, the party ultimately prevailing in such proceedings shall be entitled to recover from the defaulting party the costs of such proceedings, including reasonable attorneys' fees.
12. The Association shall permit the City, or the City's duly authorized agents, employees or representatives to enter upon the Premises at all reasonable times for the purpose of inspecting the same.
13. The Association hereby indemnifies and agrees to hold the City harmless from and against any and all actions, claims, losses, judgments, payments, recoveries and demands arising out of the use, occupancy, or non-use of the Premises as herein provided, including, but without limitation on the foregoing, any carelessness, negligence, improper conduct or breach of this Lease, by the Association or its agents, employees, patrons, suppliers or licensees, and any costs, expenses and fees, including attorneys' fees, incurred by the City incident thereto. Notwithstanding the foregoing, the Association shall indemnify and save the City harmless from any such action, claim or demand arising out of the City's failure to perform its obligations under this Lease.
14. To further protect the City and ensure compliance by the Association with the foregoing provisions of this Lease, the Association shall obtain and maintain at all times during the term hereof, with a responsible insurer, **NAMING THE CITY AS AN ADDITIONAL INSURED**, comprehensive general liability insurance against any loss or liability, personal injury or property damages, and any expenses of the parties against any claim, demands, payments, suits, actions, recoveries or judgments for damages which might result from the use, occupation or condition of the Premises in the amount of the then existing statutory limits of municipality liabilities presently codified in M.C.A. Section 2-9-108 (1999) and presently established as \$750,000 for each claim and \$1.5 million for each occurrence. The Association shall furnish a copy of such insurance policy and renewals thereof to the City and such policy shall not be canceled without a 30-day written notice to the City.
15. The Association shall not assign this Lease or any part thereof or sublet the whole or any part of the Premises without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Association may transfer this Lease to i) a successor related supporting non-profit entity, or ii) a bank or other financial institution as security for financing obtained by the Association in connection with the construction or repairs of the Facility, so long as the City's short term or long-term lease hold and ownership interests are not adversely affected, in the opinion of the City Council. The City shall execute such documents as are reasonably requested by a bank or financial

institution to reflect the City's consent to assignment of this Lease.

16. Any notice given hereunder shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed to the party to receive same at the address of such party shown above or such other address a such party may hereafter furnish to the other in writing. Any notice mailed in accordance with the preceding sentence shall be deemed to have been given at the time it is deposited in the mail.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

THE CITY OF BILLINGS

BY:

Charles F. Tooley  
CHARLES F. TOOLEY, MAYOR

ATTEST:

Marita Herold Deputy City Clerk  
MARITA HEROLD, CITY CLERK

THE BILLINGS AMATEUR HOCKEY LEAGUE

BY:

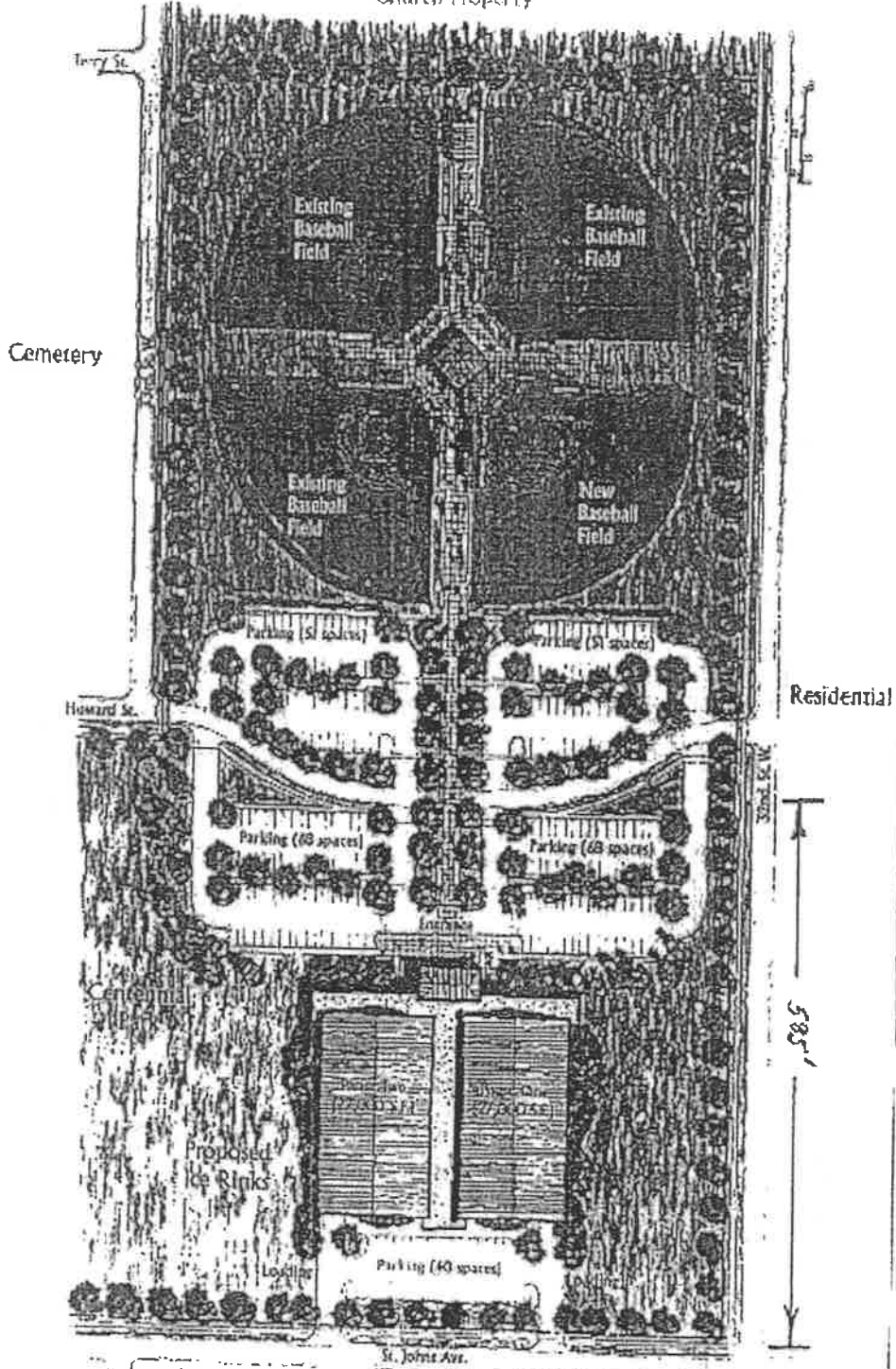
David Owen

Its:

President

EXHIBIT A

Church Property



Cemetery

Residential

Howard St.

St. John Ave.

585'

Residential 660'

Centennial West Ice Rinks

AUGUST 1977



**ASSIGNMENT OF LEASE**

BE IT KNOWN, this ASSIGNMENT OF LEASE, is entered into and made between the undersigned:

BILLINGS COMMUNITY YOUTH FOUNDATION, INC. (BCYFI)("Assignee") whose address is 2070 OVERLAND AVE #104, BILLINGS, MT and

BILLINGS AMATEUR HOCKEY LEAGUE (BAHL) ("Assignor") whose address is P.O.BOX 21562, BILLINGS, MT on this 23RD day of JUNE, 2003.

By a certain Lease Agreement dated 05/08/2000 (the "Lease"), THE CITY OF BILLINGS, MONTANA ("Landlord") leased to Assignor as lessee the property more particularly described as: the parcel of unimproved land consisting of approximately 8 acres, located on 32<sup>nd</sup> Street West and St. John's Avenue, in the City of Billings, County of Yellowstone, State of Montana, and more particularly described in the attached Exhibit A of the lease herein assigned, hereinafter referred to as the "Property". All are attached as Exhibit I.

Assignor desires to assign to Assignee, and Assignee desires to assume, all of Assignor's rights and obligations as lessee under the Lease.

Therefore, in consideration of the mutual covenants contained in Exhibit 2 and other valuable consideration received, and with the intent to be legally bound, the parties agree as follows:

Assignor hereby assigns the Lease and all of its right, title and interest thereunder to Assignee. Assignee hereby accepts such assignment. Assignee shall have all of the rights of Assignor under the Lease including, without limitation, any option to renew or extend the Lease and option to purchase the Property now held by Assignor, should any of the foregoing exist.

Assignee hereby assumes and agrees to be bound by all of Assignor's obligations under the Lease. Assignee shall perform all the terms, covenants and conditions of the Lease, including the payment of any required amounts to Landlord, after the date hereof.

Assignee shall indemnify and hold Assignor harmless from any and all claims, damages, expenses and liabilities of whatever nature, including attorneys' fees, arising under the Lease or relating to the Property after the date hereof.

Except as specifically modified herein, the Lease will continue in full force and effect.

This Assignment shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

ASSIGNOR- THE BILLINGS AMATEUR HOCKEY LEAGUE

BY: [Signature] DATE: 7/3/03

ITS: President

LESSOR CONSENT TO ASSIGNMENT:  
THE CITY OF BILLINGS

BY: [Signature]

ITS: Mayor

ASSIGNEE- BILLINGS COMMUNITY YOUTH FOUNDATION, INC.

BY: [Signature] DATE: 6/23/03

ITS: PRESIDENT

