

Bemidji Youth Hockey Association

April Regular Meeting

April 12th, 2017

Bemidji Community Arena (BCA)

Board Members Present: Jim Marcotte, Brian Schaefer, Bruce Hasbargen, Angie Loveless, Jason Brodina

Board Members Absent: Leslie Gessner, Kelly Johnson

BCA Board Members/Committee Reps/Age Group Reps/Others Present: Sarah Lundeen, Kurt Knott, Shelly Nistler, Kayla Winkler, Doug and Jill Biggin, Neil Heuwe, Meggen Solheim, Hugh Welle, Jen and Blair Nelson, Tonya Corrington, Jason Niemi, Leisha Gregg, Jeff Solheim, Corey Rupp, Brian Bignall, Dale Thompson, Clint Bruestle, Courtney Gifford, Bruce Bentfield, Tracy Pogue, Annie Laturi, Dan Gladden, Ryan Kieson, Jim Dewar, Kim and Tony Mannausau, Carrie Fish, Andy and Jen St. Peter, Brian Nermoe(sanford health)

Meeting called to order by President at 6:01p.m.

A. Consent Agenda

1. Approval of March meeting minutes

- a. Motion made by Angie, seconded by Jason, to approve. No further discussion, motion passed.

2. Approval of March financial reports and expenses

- a. Motion made by Jason, seconded by Brian to approve. No further discussion, motion passed.

B. Old business

C. New Business

1. 2nd reading of P and P changes, remove Article 3.19 Player Movement, 4G, If PM occurs between Age Groups, the player in question will not be eligible for the "A" team of that age group

- a. Motion by Jason to remove Article 3.19 4G, seconded by Angie, no further discussion, motion passed

2. Pond hockey dibs and donation

- a. Received 1900.00 dollar donation from Winterfest group
b. Consensus is to do it again this upcoming year
c. Coordinate earlier for dib shifts

3. Budget

- a. Table til next month

4. Board member resignation

- a. Kelly Johnson resigned as of Sunday April 9th, 2017
b. Replace position with election candidates
c. Will be finishing Kelly's two year term

5. Change articles of incorporation
 - a. Increase size of board from 7 to 9 members
 - b. Jason makes a motion to increase board size from 7 members to 9 members in articles, seconded by Jim, no further discussion, motion passed
6. Board term limits
 - a. 2 new board members elected for 3 year terms
 - b. 1 elected member will be finishing Kelly's 2 year term
 - c. 2 new members, 1 will be a two year term, 1 will be a 3 year term, this makes a balance of 3 people up for election each year
7. Kevin Waldhausen - update on goalie scholarships
 - a. \$75.00 off from CPGS, \$250.00 from BYHA, \$200.00 from parents.
 - b. Waiting for applications to come in from kids. Due date April 30th
8. Use Agreements
 - a. Have spent over year working on agreements
 - b. All parties have reviewed and gone back and forth on different versions
 - c. Spells out all aspects of the use of the board meeting.
 - d. Jim makes a motion to pass resolution of the board of directors of the Bemidji Youth Hockey Association, Inc., seconded by Brian, further discussion - BCAC members discuss commitments to future projects, Does signing these agreements make a difference for youth hockey? Agreements only discuss how building is being used, defines BCAC role in management and BYHA role in use of the BCA. No further discussion, motion passed.

Open Discussion

Adjournment motion made by Jim and seconded by Angie to adjourn. No further discussion and motion passed. Meeting adjourned at 7:35pm.

Next Board Meeting **Second Wednesday of the month, May 10th, 6pm, BCA**

**RESOLUTIONS
OF THE
BOARD OF DIRECTORS
OF
BEMIDJI COMMUNITY ARENA CORPORATION
ADOPTED WITHOUT MEETING**

The undersigned, constituting all of the members of the Board of Directors of the Bemidji Community Arena Corporation, a Minnesota non-profit corporation (the "Corporation"), do hereby adopt the following resolutions in writing pursuant to Minnesota Statutes, Sections 317A.171 and 317A.239.

1. Use Agreement

RESOLVED, that it is in the best interest of the Corporation to enter into a Use Agreement in the form attached hereto as Exhibit A, said Use Agreement is hereby adopted and approved.

RESOLVED FURTHER, that the President of this Corporation is authorized and directed to make and execute the Use Agreement on behalf of the Corporation embracing the foregoing resolution.

2. Joint Finance Committee Agreement

RESOLVED, that it is in the best interest of the Corporation to enter into a Joint Finance Committee Agreement in the form attached hereto as Exhibit B, said Joint Finance Committee Agreement is hereby adopted and approved.

RESOLVED FURTHER, that the President of this Corporation is authorized and directed to make and execute the Joint Finance Committee Agreement on behalf of the Corporation embracing the foregoing resolution.

3. Bill of Sale

RESOLVED, that it is in the best interest of the Corporation to enter into a Bill of Sale in the form attached hereto as Exhibit C, whereby the Bemidji Youth Hockey Association assigns and transfers all of its interest the building and ice rink referred to as the Bemidji Community Arena, including any improvements thereto to the Corporation, said Bill of Sale is hereby adopted and approved.

RESOLVED FURTHER, that the President of this Corporation is authorized and directed to make and execute the Bill of Sale on behalf of the Corporation embracing the foregoing resolution.

RESOLVED FURTHER, the Board of Directors and Corporation agrees that it is in the best interest of all parties involved that the Law Offices of Stinson Leonard Street LLP shall hold the executed Bill of Sale in escrow until the time the Corporation receives its 501(c)(3) exempt status or in the event the exemption is denied the Corporation transfers the Bemidji Community Arena back to Bemidji Youth Hockey Association.

RESOLVED FURTHER, the Board of Directors and the Corporation are in agreement that in the event the Corporation does not receive its 501(c)(3) exempt status from the Internal Revenue Service, the President of this Corporation shall be authorized to execute a similar bill of sale transferring the Bemidji Community Arena back to the Bemidji Youth Hockey Association.

[Signature Page Follows]

The foregoing resolutions of the Board of Directors of Bemidji Youth Hockey Association, Inc., a Minnesota non-profit corporation were duly adopted and approved by affirmative vote of a majority of said directors present at a duly held meeting of said Board on April 12, 2017, at which a quorum of directors were present.

Motion proposed by:

Name: Jim Marcotte
Title: Treasurer

Motion seconded by:

Name: Brian Schaefer
Title: Secretary

Directors in favor:

Name: Bruce Hasbargen
Title: President

Name: Brian Schaefer
Title: Secretary

Name: Jim Marcotte
Title: Treasurer

Name: Jason Brodina
Title: Vice President

Name: Angie Loveless
Title: Director

Name: _____
Title: _____

Directors opposed:

Name: _____
Title: _____

Name: _____
Title: _____

Name: _____
Title: _____

Name: _____
Title: _____

Name: _____
Title: _____

Name: _____
Title: _____

Absent: Leslie Gessner.

Exhibit "A"

ASSIGNMENT AND ASSUMPTION OF LEASE

WHEREAS, BEMIDJI YOUTH HOCKEY ASSOCIATION, (hereinafter "Assignor"), for valuable consideration paid by BEMIDJI COMMUNITY ARENA CORPORATION, (hereinafter "Assignee"), receipt of which is hereby acknowledged, and subject to the consent of INDEPENDENT SCHOOL DISTRICT #31 (hereinafter "Landlord"), hereby assigns to the Assignee that certain Lease between Landlord and Assignor, dated January, 4, 2000, and assignment thereto dated January 4, 2000, and any and all renewal options incorporated therein, leasing that certain premises legally described on attached Exhibit "A" (hereinafter "Rental Property") which Lease is hereby incorporated herein as fully as if the provisions thereof were set forth herein.

WHEREAS, Assignee hereby assumes the obligations of Assignor, as Tenant in the Lease described above, and agrees to perform all of the Tenant's covenants and obligations.

WHEREAS, Landlord consents to the foregoing assignment and assumption of the Lease made between Landlord, Assignee and Assignor.

NOW THEREFORE, in consideration of the premises and the rents and covenants contained in the Lease and this Assignment and Assumption of Lease, the Lease is amended as follows:

- 1. The Tenant under the Lease shall now be Bemidji Community Arena Corporation, a Minnesota nonprofit corporation.
2. Except as modified herein, all other terms and conditions of the Lease shall remain unchanged and in full force and effect.

THIS ASSIGNMENT AND ASSUMPTION OF LEASE shall apply to and inure to the benefit and bind all parties hereto, their respective successors and/or assigns.

IN WITNESS OF THIS ASSIGNMENT AND ASSUMPTION OF LEASE, Assignor, Assignee and Landlord have properly executed the same of this ___ day of ___, 2017.

ASSIGNOR: Bemidji Youth Hockey Association
By:
Its:

ASSIGNEE: Bemidji Community Arena Corporation
By: [Signature]
Its:

LANDLORD: Independent School District #31
By:
Its:

EXHIBIT "A"

That part of the Northwest Quarter of the Northwest Quarter, Section 18, Township 146 North, Range 33 West of the 5th Principle Meridian, Beltrami County, Minnesota, described as follows:

The south 300.00 feet of the north 692.00 feet of the east 150.00 feet of the west 375 feet of said Northwest Quarter of the Northwest Quarter.

Exhibit "B"

ASSIGNMENT AND ASSUMPTION OF USE AGREEMENT

WHEREAS, BEMIDJI YOUTH HOCKEY ASSOCIATION, (hereinafter "Assignor"), for valuable consideration paid by BEMIDJI COMMUNITY ARENA CORPORATION, (hereinafter "Assignee"), receipt of which is hereby acknowledged, and subject to the consent of INDEPENDENT SCHOOL DISTRICT #31 (hereinafter "ISD #31"), hereby assigns to the Assignee that certain Use Agreement – Bemidji Youth Hockey Rink dated January 4, 2000, and any and all amendments thereto (the "Use Agreement").

WHEREAS, Assignor desires to assign all of its rights under the Use Agreement to Assignee and Assignee desires to assume Assignor's obligation thereunder.

NOW, THEREFORE, the undersigned agree as follows:

Assignor does hereby sell, assign, pledge and transfer to Assignee all of its right, title and interest in and to Use Agreement and Assignee hereby assumes all of Assignor's obligations under the terms of the Use Agreement.

IN WITNESS OF THIS ASSIGNMENT AND ASSUMPTION OF USE AGREEMENT, Assignor, Assignee and ISD #31 have properly executed the same of this ____ day of _____, 2017.


ASSIGNOR:

Bemidji Youth Hockey Association

By: _____
Its: _____

ASSIGNEE:

Bemidji Community Arena Corporation

By:  _____
Its: _____

LANDLORD:

Independent School District #31

By: _____
Its: _____

Exhibit "C"

ASSIGNMENT AND ASSUMPTION
OF
ICE ARENA DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF ICE ARENA DEVELOPMENT AGREEMENT is made as of this ____ day of _____, 2017, by and between Bemidji Youth Hockey Association, Inc. ("Assignor"), and Bemidji Community Arena Corporation, a Minnesota nonprofit corporation ("Assignee").

PRELIMINARY STATEMENT:

A. On October 1, 1996, Assignor entered into an Ice Arena Development Agreement with the County of Beltrami ("County"), whereby Assignor agreed to act as an operating entity and form a board to manage and operate the hockey arena. The Ice Arena Development Agreement, together with any amendments or assignments thereto, is hereinafter referred to as the "Arena Development Agreement".

B. Assignor desires to assign all of its rights under the Arena Development Agreement to Assignee and Assignee desires to assume Assignor's obligation thereunder.

NOW, THEREFORE, the undersigned agree as follows:

Assignor does hereby sell, assign, pledge and transfer to Assignee all of its right, title and interest in and to Arena Development Agreement and Assignee hereby assumes all of Assignor's obligations under the terms of the Arena Development Agreement.

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed this Assignment and Assumption of Ice Arena Development Agreement to be executed as of the date first above written.

ASSIGNOR:

ASSIGNEE:

Bemidji Youth Hockey Association, Inc.

Bemidji Community Arena Corporation

By: _____

By:  _____

Its: _____

Its: _____

ASSIGNMENT CONSENTED TO BY COUNTY:

County of Beltrami:

By _____

Its: _____

Exhibit "D"

Bemidji Community Arena Corporation Bemidji Youth Hockey Association, Inc. Joint Finance Committee Agreement

This Joint Finance Committee Agreement ("JFC Agreement") is between Bemidji Community Arena Corporation, a Minnesota nonprofit corporation (the "BCAC") and Bemidji Youth Hockey Association, Inc., a Minnesota nonprofit corporation (the "BYHA"), also herein referred to as ("Party") or collectively as ("Parties"). This Agreement is intended to solidify the relationship between the Parties relative to any and all financial matters, issues and decisions affecting either or both organizations, the center piece of which is an annual balanced operating budget.

REFERENCES

Joint Finance Committee (JFC)

Bemidji Community Arena Corporation (BCAC)

Bemidji Youth Hockey Association, Inc. (BYHA)

Bemidji Community Arena (BCA or Facility)

Independent School District #31 / Bemidji Area Schools (BAS)

Existing Agreements – Existing 'Use Agreement' between BYHA and BAS, dated January 4, 2000 and annual 'Game Agreement' between BAS and BCAC

Contemporaneous Agreement – Use Agreement between BCAC and BYHA

RECITALS

A. Agreement Parties;

➤ **Bemidji Community Arena Corporation**

General Responsibility – Develop, construct, manage, operate and maintain the BCA to best meet the needs of the BYHA, BAS, the Bemidji Hockey Community and other uses by organizations and individuals that benefit and complement the Bemidji Community.

➤ **Bemidji Youth Hockey Association, Inc.**

General Responsibility – Organize, sponsor and conduct a youth hockey program, and to provide an opportunity for any Bemidji youth to participate, develop and learn the game of hockey in a youth program.

B. Both Parties agree and resolve that the financial strength and stability of both Parties is the foremost requirement to successfully operate and complete the General Responsibilities identified above.

C. Both Parties agree and resolve that this JFC Agreement shall govern for all matters identified herein related to Finance, including but not limited to, establishing annual budgets, annual capital expenditures and/or significant financial decisions, from all operations of both Parties, when financial matters are involved.

DOCUMENT PURPOSE BACKGROUND

Formally organized in 1978, the BYHA has managed a youth hockey sporting organization since that time. Responsibilities and activities include:

- Manage the youth sports membership families, including participation by girls and boys between the ages of 4 yrs. to 16 yrs. of age, programming for whom includes:
 - Physical and social development
 - Education and encouragement of ‘team’ and working together
 - The emphasis on training of discipline, respect, caring and commitment to others
 - A focus on respect for authority and sportsmanship
- Hiring and managing instructors or coaches to teach players the sport of ice hockey
- Scheduling of all ice-hockey practice and game activities, to include provisions for on and off ice officials, coaches, timekeepers, and emergency medical staff.
- Perform screening of instructors to ensure the safety and security of players, families, board members, and colleague coaches.
- Oversight and screening of coaches and all volunteers to ensure proper training of working with youth girls and boys to provide a safe environment for everyone.
- Management and oversight of all budget and finance activities for all program operations.

In 1996, the BYHA, amidst a shortage of indoor ice availability, with the introduction of girls and women’s hockey in Bemidji, embarked on the construction of a fourth indoor ice arena. Completed in 2000, the BCA became the primary indoor ice arena for the BYHA use and establishment of an Arena Board took place for management of the facility, with ultimate authority remaining with the BYHA.

The BYHA desires to formalize the ownership, management and the supervision of the BCA and the contemplated expansion thereof with legal establishment and organization of the BCAC and preservation of the characteristics of the arena board structure and enhancement of the same. The duties and responsibilities of managing the BCA are vastly different and distinct as compared to the duties and responsibilities of managing a youth sporting organization, as outlined above. The BCAC duties and responsibilities include:

- Protection of property and equipment and life safety and security
- Perpetuation of board members with the necessary skills for the Planning, Development, Maintenance, and Operation of an industrial type facility, such as BCA.
- Selection of board members to occur by recruitment rather than the membership election of board members within the BYHA corporate organization.
- Encouragement of the continuity and longevity of board membership service.
- Management and oversight of all budget and finance activities for all facility operations, maintenance, upkeep, and repairs thereto.

IN SUMMARY

The BYHA board of directors, as elected by their general membership, acknowledges their responsibilities of program operations is a far different set of duties and responsibilities than that of development and operation of an industrial indoor ice-arena facility.

The BYHA board of directors further acknowledges the importance of selection of the BCAC board members for their respective skill and expertise rather than a member elected board that may lack the required skill set.

By adopting the proposed BCA/BYHA corporate entity restructure the BYHA board can confidently focus on the business of managing a youth sports organization and assign the management of BCA to the professionals that are recruited for the skills and expertise they bring to the BCA and the BCAC.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises set forth below and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **PURPOSE of this AGREEMENT.** The Purpose of this Agreement is to officially recognize and formulate a BCAC/BYHA Joint Finance Committee (JFC). The JFC shall have oversight and governing authority for both Parties with regard to all matters related to Finance, as identified herein.
2. **TERM / FISCAL YEAR.** The term of this Agreement shall be in effect for the entire Term of the Use Agreement between BCAC and BYHA relative to the BYHA use of the BCA. The Fiscal Year for both Parties shall be from May 1 to April 30.
3. **BCAC / BYHA - JFC Formation.**
 - The JFC shall consist of six (6) members.
 - Each member shall have voting rights.
 - The JFC will consist of three (3) members each, from both BCAC and BYHA.
 - The three (3) members from each organization (BCAC and BYHA) shall be comprised of the;
 - The President, or an alternate from the Board of Directors, as assigned from the Board of Directors
 - The Treasurer
 - One (1) additional member, as assigned from the Board of Directors of each organization on an annual basis at the start of the Fiscal Year identified herein.
 - The JFC shall select a Committee Chairperson, on an annual basis. The position of JFC Chairperson is to call and conduct meetings. No other special authority or power shall be realized by the JFC Chairperson.
 - The JFC shall conduct monthly meetings, as determined by the JFC.
 - Special or emergency meetings may be called, if necessary, by the JFC Chairperson. For special / emergency meeting voting, electronic communication and voting may be allowed, as determined by the JFC.
 - The entire JFC (all six members) shall be included in all voting decisions. If all six (6) members are not available for voting decisions, then the voting number and process shall be modified so each Party to this agreement has equal voting authority. Electronic communication and voting may be allowed, as determined by the JFC.
 - All members of the JFC shall participate equally in the duties, responsibilities and work load required of the JFC.
 - All votes must pass by a majority.
 - The JFC shall record meeting minutes and share same minutes with both organizations.

4. **Monthly Reporting** – Both Parties shall be responsible and required to submit a ‘Financial Status Report’ (FSR) to the JFC on a monthly basis, as determined by the JFC. The detail and content of the FSR shall be as determined by the JFC.
5. **Accounting** – The JFC shall determine the means and methods required for basic accounting practices for both Parties to this Agreement.
6. **JFC Oversight & Governing Authority.** The JFC shall have oversight and governing authority for all financial matters for both Parties including, but not limited to, the following;

6.1 **Annual Budgets** – Both Parties shall be responsible to assemble and propose a balanced annual operating budget with sufficient analysis and historical income/expense detail for JFC review and approval. Proposed annual budgets shall be prepared for JFC review, no later than April 1, of each year. The proposed annual budgets shall be subject to adjustment per JFC review and direction.

The BCAC and BYHA shall have the authority to reserve and designate reasonable budget reserves for unforeseen general operating expenses. Same reserves shall be reviewed and approved by the JFC.

The BCAC and BYHA will be responsible and shall assemble and propose a Capital Purchases Plan each year for consideration by JFC. Capital Purchases shall be defined as assets with a useful life exceeding 5 years that have a cost in excess of \$2,500; the same will be accounted for as assets on the Company’s financial statements and depreciation expense shall be recorded in accordance with accounting principles. Repairs with a significant value, such as roof replacement, will be reserved in advance. Funding for the purchase of Capital Assets will be determined by the JFC.

6.2 **Use Fee** –The proposed annual budgets shall include a Use Fee (UF) for BYHA use of the BCA. A primary responsibility of the JFC is to establish the annual UF BYHA shall pay each Fiscal Year. The annual BYHA UF payment shall be as set forth below:

- A) The UF shall be an amount as determined by the JFC, and shall be paid on a monthly, quarterly or annual basis as determined by the JFC.
- B) The UF shall not be less than the BCA Net Operating Cost. The **BCA Net Operating Cost shall be,** in ‘general terms’ **-The Sum of BCAC Operating Costs Less Rent Received by Others.** Rent is defined herein as compensation received for use of the Facility and/or BCA owned equipment.
- C) Repairs and maintenance costs of the Facility and all related equipment thereto, will be included in the annual operating budget presented by BCAC to JFC with consideration given to replacement of obsolete or worn out equipment. These costs will become part of the UF.
- D) The UF may be subject to adjustment due to unforeseen and unavoidable expenses, as approved by the JFC. Subject to approval by JFC, any surplus amounts at the end of each Fiscal Year will be:
 - a. refunded to BYHA, or
 - b. applied as a credit against the UF for the next year, or
 - c. held in reserve for future budget reserves and/or deviations

6.3 Revenues / Expenses. A primary responsibility of the JFC is to determine how Revenues (Income) and Costs (Expenses) will be allocated to both Parties. In addition, a crucial factor is the allocation and assignment of administration responsibility to the Parties of the same. See Exhibit A (attached) which identifies the allocation of Income and Expenses for each Party, the assignment of accounting items for use fee calculation, and the assignment of oversight responsibility. Exhibit A may be revised by the JFC annually as part of the budgeting process.

Revenues / Expenses Key Notes:

- A) All Net Income from operating the BCA 'Concession Services' shall accrue to the BYHA. Net Income shall be the Sum of Concessions Gross Income minus all Concession Related Expenses. Concession Related Expenses shall include, but not be limited to;
- Cost of Goods Sold
 - Concession related payroll costs including taxes and 'labor burden'.
 - Concessions space build-out and finishes and FFE including; original purchase costs, M/E services/hook-up, repairs, and maintenance.
 - The cost of utilities and energy consumption shall be considered a general building expense and is NOT considered a Concessions Related Expense
- B) All Net Income from Advertising (Advertising Net Income) within the BCA (and/or 'associated with' the BCA Marketing Program, including but not limited to, lighted signs, TV monitors, lobby kiosk, BYHA website, BYHA tournament program and Nymore Arena banners) shall accrue to the BCAC for the designated purposes of debt service, reserves for future debt service, BCA improvements and expansions, and/or long term BCA capital improvements. The Advertising Net Income shall be the sum of Advertising Gross Income minus Advertising Related Expenses. Advertising Related Expenses shall include, but not be limited to;
- Cost of capital 'start up' costs, maintenance and repairs to advertising related features such as sign cabinets, banners, monitors, kiosk, etc.
 - Cost of annual donation to high school boosters
 - The printing costs for the BYHA Tournament programs and BYHA Website maintenance costs as determined by the JFC
 - The cost of utilities and energy consumption related to the advertising features shall be considered a general building expense and NOT factored into determining the Advertising Net Income.

6.4 – Budget Deviations – Both Parties shall be responsible and required to analyze all ongoing operational matters (Actions/Decisions) and the effect of same Actions/Decisions to the Parties budget. The JFC shall have oversight and governing authority on Actions/Decisions for both Parties which will adversely affect the Parties budget. For both Parties, any Action/Decision which will deviate and adversely affect the budget by more than \$5,000 shall be submitted to the JFC for review and approval.

All items proposed for approval, shall include sufficient written analysis and explanation of the proposed adverse budget deviation.

7. Miscellaneous

7.1 - BYHA Team Sponsorship and Marketing (advertising/fundraising) Programs. The BYHA Team Sponsorship Program shall complement and not compete with the BCAC Marketing Program. BYHA Team Sponsorship exposure is encouraged in the BCA with a selective recognition area and on the BYHA website (with exposure on the team sponsors page and on the specific sponsored team page). All efforts shall be made to coordinate customer sales calls, as some businesses support both BCAC Marketing and BYHA Team Sponsorship.

BYHA shall not be prohibited from developing other Marketing (advertising or fundraising) sources of revenue, but same BYHA Marketing shall not include advertising in the BCA Building, or that competes with, or conflicts with, the existing advertising mediums associated with the BCAC Marketing Program. Coordination

and cooperation is encouraged, therefore BCAC and BYHA volunteers shall be knowledgeable about all advertising 'Programs' and present options to potential customers accordingly.

7.2 - Binding Effect. The terms, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

7.3 - The attached Exhibit B (Cash Disbursement) shall be included as part of this Agreement and requires the complete accounting as of April 30, 2017, the Fiscal Year end of the BYHA and the BCAC, but generally will be a 50/50 division of cash assets to be allocated to each, after deducting \$95,000.00 to be set aside for future improvements to BCA.

7.4 - Revisions to this Agreement require approval of the Board of Directors of both Parties.

7.5 - This Agreement and the exhibits now or hereafter attached, along with the Contemporaneous Agreement, referenced herein above, are the only agreements between the parties concerning the subject matter hereof and supersedes all prior agreements whether written or oral, relating thereto.

7.6 - No assignment of this agreement is allowed without the written consent of both parties.

7.7 - This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

BEMIDJI YOUTH HOCKEY ASSOCIATION, INC.

Signed _____ Date _____
Name _____

BEMIDJI COMMUNITY ARENA CORPORATION

Signed _____ Date _____
Name _____

Exhibit A

BYHA / BCAC Joint Finance Committee Agreement Income / Expense Allocation and Administration Assignment

April 12, 2017

	BYHA	BCAC	Marketing	Comments / Clarifications
Income				
BCAC Advertising Program			X	advertising package and ala-carte sales
BYHA Marketing Program	X			traveling & in house team sponsorships and/or BYHA Marketing
BCA Rental Income		X		income associated with ice and dry floor rental /use of building
Concessions Sales	X			income from concession sales and payment of sales taxes
Fundraising / Raffle Sales	X			membership fundraising
Interest Income	X	X		possible interest income associated with each respective organization
Misc. Income	X	X		misc. income associated with each respective organization
Membership Registration	X			regular and preseason
Tournament Hosting	X			registration and gate fees
BCA / Boosters Seat Program		X		BHS Boys Booster managed, revenue sharing
BCA Skate Sharpening		X		skate sharpening services in the BCA
Expense				
Cost of Goods Sold	X			concessions
Accounting Fees	X	X		associated with each respective organization
BCAC Advertising Program			X	repairs / maintenance to lighted signs, monitors, booster donation, etc.
BYHA Tounament Programs			X	Tournament programs
BYHA Print Ads	X			recruitment ads in the Pioneer
Association Dues	X			
Bad Debt	X	X		associated with each respective organization
Bank and Credit Card Fees	X			
BYHA Banquet and Kick Off Events	X			BYHA events
BCA Building Expenses				
Hockey Related	X			on ice equipment / hockey specialties
Ice Painting / Ice Establishment		X		in ice logos, paint, etc.
Insurance	X	X		associated with each respective organization
Repairs to BCA & Equipment		X		building and equipment repairs
Concessions	X			licenses, maintenance, repairs, improvements
BCA misc.		X		security, supplies, etc.
BYHA Raffle	X			printing costs and prizes paid, etc.
Capital Purchases and Reserves			X	Reserves for Capital Purchases exceeding \$2,500 and Debt Service
BCA Equipment Purchases		X		BCA mechanical, electrical, ice plant, etc. equipment purchases
Concession Equipment Purchases	X			Concessions FFE purchases
Hockey Related	X			jerseys, pucks, gear, etc.
BYHA Hockey Scholarships	X			
Ice Rental	X			use fee for BCA use, rental at City, Anymore, Sanford
Office Expenses	X			postage, supplies, mailing materials
Misc. BYHA	X			licenses, mileage, etc.
BYHA Website			X	Completely managed by BYHA
BYHA Recruiting	X			BYHA recruiting of membership
Salaries				
BCA		X		BCA employees, staff
Work Comp Insurance	X	X		associated with each respective organization
Coaches	X			coaches pay, reimbursement of certification, USA Hockey fees
Concession Manager	X			
Referees / EMTs	X			
BYHA Misc. Employees	X			scheduler, DIBS manager, etc.
Payroll Taxes	X	X		associated with each respective organization
Tournaments Away	X			Entry Fees and all expenses associated with away tournaments
Tournaments Hosting	X			all expenses associated with hosting tournaments
BCA Staff Training		X		education of BCA staff
BCA Utilities		X		gas, electric, propane, garbage pick up, telephone, security, etc.

BYHA 'USE FEE' is BCAC Expenses less BCAC income received as identified in BCAC column above.

Exhibit B

**BCAC/BYHA Joint Finance Committee Agreement
BYHA / BCAC Organizational Separation
Cash Disbursement
at Fiscal Year End 4/30/17**

CASH	FNB	as of 03/31/17
BCA Operating	Deerwood	\$32,208
BYHA Operating		\$46,154
Emergency Maintenance/Repairs		\$25,407
Gambling	FNB	\$93,565
General Savings	FNB	\$30,100
Lumberjacks Boosters		\$19,337
PBIHT		\$32,862
Zamboni Replacement		\$25,113
SubTotal		\$304,746
Anticipated Revisions by Year End *		
* Mens League Ice Rental	\$5,625	
* Anticipated BCAC Expenses	-\$5,000	
* Anticipated BYHA Expenses	-\$5,000	
Spend Down by Year End Sub Total	-\$4,375	-\$4,375
SubTotal		\$300,371
Deduct Separate Organizations		
* Boosters	-\$19,337	
* PBIHT	-\$32,862	
Separate Organizations Sub Total	-\$52,199	-\$52,199
SubTotal		\$248,172
Separate Specific Set Aside Funds		
* Emergency Budget Reserve		-\$25,407
* Zamboni Replacement		-\$25,113
Debt Service/Capital Improvements		
* Income	\$115,000	
* Ad Expenses and General Contribution	-\$20,000	
** Debt Service Set Aside Sub Total	\$95,000	-\$95,000
SubTotal		\$102,652
Cash to BYHA	50%	\$51,326
BCAC Cash Assignment	50%	\$51,326
* Add to Zamboni Replacement Fund		-\$25,000
* General Operating		\$26,326

BYHA		BCAC	
General Operating	Separate Specific Set Aside Funds	General Operating	Separate Specific Set Aside Funds
\$51,326	\$25,407	\$26,326	\$25,113
			\$25,000
			\$95,000

* - These amounts are estimated for forthcoming Income/Expenses by Year End

** - The priority use of these funds is: LED lighting in advertising signs, dry land shooting area, girls dressing area, and an officials dressing area

Exhibit E

Bemidji Community Arena Corporation Bemidji Youth Hockey Association, Inc. Use Agreement

This Use Agreement (“Agreement”) is between Bemidji Community Arena Corporation, a Minnesota nonprofit corporation (the “BCAC”) and Bemidji Youth Hockey Association, Inc., a Minnesota nonprofit corporation (the “BYHA”). This Agreement is intended to solidify the relationships between the parties relative to BYHA use of the BCA.

REFERENCES

Bemidji Community Arena Corporation (BCAC)
Bemidji Youth Hockey Association, Inc. (BYHA or Principal User)
Bemidji Community Arena (BCA or Facility)
Independent School District #31 / Bemidji Area Schools (BAS)
Existing Agreements – Existing ‘Use Agreement’ between BYHA and BAS, dated January 4, 2000 and annual ‘Game Agreement’ between BAS and BCAC
Contemporaneous Agreement – Joint Finance Committee (JFC) Agreement between BCAC and BYHA

RECITALS

- A. The General Responsibilities of the BCAC and BYHA are as follows;
 - **BCAC** – Develop, construct, manage, operate and maintain the BCA to best meet the needs of the BYHA, BAS, the Bemidji Hockey Community and other uses by organizations and individuals that benefit and complement the Bemidji Community.
 - **BYHA** – Organize, sponsor and conduct a youth hockey program, and to provide an opportunity for any Bemidji youth to participate, develop and learn the game of hockey in a youth program.
- B. The BYHA pledges and is committed to maximize the use of the BCA as the primary facility required to accomplish the General Responsibilities identified herein.
- C. The BCA is constructed on land owned by BAS, solidified in a Land Lease between BAS and Beltrami County dated January 4, 2000. The Land Lease stipulates that, “This (Land) Lease, and any extension thereof, will automatically terminate if Tenant fails to use the Premises for the purposes contemplated herein for a period of twenty-four (24) consecutive months”.
- D. The BYHA representatives on the BCAC Board of Directors shall be the primary conduit and responsibility for the BYHA related requests, issues or concerns to the BCAC and likewise shall be the primary conduit for communication of any and all issues and matters to the BYHA Board of Directors regarding concerns by BCAC.

DOCUMENT PURPOSE BACKGROUND

Formally organized in 1978, the BYHA has managed a youth hockey sporting organization since that time. Responsibilities and activities include:

- Manage the youth sports membership families, including participation by girls and boys between the ages of which, in general are 4 yrs. to 16 yrs. of age, programming for whom includes:
 - Physical and social development
 - Education and encouragement of 'team' and working together
 - The emphasis on training of discipline, respect, caring and commitment to others
 - A focus on respect for authority and sportsmanship
- Hiring and managing instructors or coaches to teach players the sport of ice hockey
- Scheduling of all ice-hockey practice and game activities, to include provisions for on and off ice officials, coaches, timekeepers, and emergency medical staff.
- Perform screening of instructors to ensure the safety and security of players, families, board members, and colleague coaches.
- Oversight and screening of coaches and all volunteers to ensure proper training of working with youth girls and boys to provide a safe environment for everyone.
- Management and oversight of all budget and finance activities for all program operations.

In 1996, the BYHA, amidst a shortage of indoor ice availability, with the introduction of girls and women's hockey in Bemidji, embarked on the construction of a fourth indoor ice arena. Completed in 2000, the BCA became the primary indoor ice arena for the BYHA use and establishment of an Arena Board took place for management of the facility, with ultimate authority remaining with the BYHA.

The BYHA desires to formalize the ownership, management and the supervision of the BCA and the contemplated expansion thereof with legal establishment and organization of the BCAC and preservation of the characteristics of the arena board structure and enhancement of the same. The duties and responsibilities of managing the BCA are vastly different and distinct as compared to the duties and responsibilities of managing a youth sporting organization, as outlined above. The BCAC duties and responsibilities include:

- Protection of property and equipment and life safety and security
- Perpetuation of board members with the necessary skills for the Planning, Development, Maintenance, and Operation of an industrial type facility, such as BCA.
- Selection of board members to occur by recruitment rather than the membership election of board members within the BYHA corporate organization.
- Encouragement of the continuity and longevity of board membership service.
- Management and oversight of all budget and finance activities for all facility operations, maintenance, upkeep, and repairs thereto.

IN SUMMARY

The BYHA board of directors, as elected by their general membership, acknowledges their responsibilities of program operations is a far different set of duties and responsibilities than that of development and operation of an industrial indoor ice-arena facility.

The BYHA board of directors further acknowledges the importance of selection of the BCAC board members for their respective skill and expertise rather than a member elected board that may lack the required skill set.

By adopting the proposed BCA/BYHA corporate entity restructure the BYHA board can confidently focus on the business of managing a youth sports organization and assign the management of BCA to the professionals that are recruited for the skills and expertise they bring to the BCA and the BCAC.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises set forth below and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Fiscal Year.** For purposes of this Agreement, the term 'Fiscal Year' shall mean a twelve month period beginning May 1 and ending on April 30. For each Fiscal Year during the term of this Agreement, BYHA shall have 'USE' of the BCA as defined by this Agreement.
2. **Principal User.** The BYHA shall be the Principal User of BCA, which, among other things, shall mean the BYHA shall have first priority use of the Facility and consume the majority of available use hours of BCA, subject only to minor use by BAS and others. Principal User rights and privileges are detailed in Section 4. Annual Use Schedule below, but are generally described as first priority over scheduling the use of BCA.
3. **TERM.** Unless earlier terminated by the BCAC for default of the BYHA under section 19 below or unless earlier terminated by the BYHA as set forth below in this section, the term of this Agreement shall be in effect for the entire Term of the Land Lease of given date herewith between Independent School District #31 and Beltrami County relative to the land on which the BCA is constructed and the Assignment of Lease thereof by Beltrami County to BYHA.
4. **Annual Use Schedule.** During the months of March and April of each Fiscal Year, the parties agree to outline, in good faith, a proposed Use Schedule that will be applicable for the following Fiscal Year. By May 1 of each year the BCAC and BYHA shall agree on same proposed outline Use Schedule for the Fiscal Year and same shall then be applicable as an outline for scheduling BYHA use of the BCA. BYHA use and scheduling parameters are set forth as follows;

Ice Time Use

- A) Ice Time Use is defined as the traditional BYHA Hockey Season and use of the BCA shall be from (+/-) October 1st to the first week into March, unless modified by both Parties.
- B) The scheduling of BYHA use of the BCA is the responsibility of BYHA.
- C) BYHA shall have first option to schedule and use all available BCA ice time, except as reserved and needed by Existing Agreements. Same scheduling of BYHA use of the BCA shall work around, consider and be subject to Existing Agreements. The BYHA 'Scheduler' may communicate and coordinate directly with BAS regarding BYHA and BAS scheduled facility use each season.

- D) All BYHA Ice Time Use of the BCA is required to be scheduled, communicated and coordinated with BCAC.
- E) BYHA Ice Time Use shall be for BYHA tryouts, pre-season hockey, practices, clinics, scrimmages, open hockey skating, games, jamborees or tournaments, and for any other reasonable purpose.
- F) BYHA use of the BCA during ‘unscheduled or closed times’ is prohibited without notification and coordination with BCAC.
- G) BYHA shall not interfere or schedule use of BCA, if use by others is previously scheduled. The coordination and scheduling of ice time use of the BCA, by others, is the responsibility of BYHA.
- H) Available Ice Time to schedule is reasonably and generally between the hours of 6:00 A.M. and 10:30 P.M.
- I) All BYHA use of the BCA is subject to supervision by BYHA.
- J) All BYHA use of the BCA shall consider the established and traditional use by others, such as Sunday nights use by City of Bemidji Hockey League, Old Timers, etc.

Off Ice / Off Season / No Ice Use

- A) “Off Ice/Off Season/No Ice Use” is defined as the period of time outside of the traditional BYHA Hockey Season, which shall be from +/- the first week of March until October 1st.
- B) BYHA shall have reasonable access and use of the BCA during ‘Off season / No ice’ periods provided same is approved, scheduled and coordinated with BCAC.
- C) BYHA ‘off season / no ice’ use of the BCA shall be for miscellaneous BYHA activities, such as, but not limited to, meetings, gatherings, registration, team meals, fundraising activities, etc.

General Use Notes

- A) BYHA shall have reasonable access to use ‘youth locker rooms’ during BYHA ice time activities, subject to supervision by BYHA, in accordance with Minnesota Hockey and USA Hockey guidelines.
- B) BYHA shall have reasonable access to use ‘dry-floor’ training area for dry floor training. BYHA use of dry-floor is subject to supervision by BYHA.
- C) BYHA shall have sole access to use the BCA trophy cases for BYHA trophies, awards, team sponsorship recognition, BYHA history, etc.
- D) BYHA or its invitees shall NOT have access to use BCA Press Box at any time, as ordered by the City of Bemidji. Press box use is limited to professional press (radio, TV, newspaper) only.

5. **Use Fee.** For each Fiscal Year, the BYHA agrees to pay for its use of the BCA an annual Use Fee. The Use Fee shall be as determined by the BCAC / BYHA Joint Finance Committee (JFC).

6. **Revenues / Expenses.** All revenues and expenses shall be assigned and determined by the BCAC / BYHA Joint Finance Committee.

7. **Additional Use / Facility Access.** In the event the BYHA desires to use the BCA during times not identified in the proposed Annual Use Schedule, same desired use shall be subject to BCAC approval.

BYHA shall coordinate and provide primary responsibility for 'set-up' and 'take-down' of features, furniture, tables, etc. for special BYHA events such as, but not limited to, picture night, large gatherings, spaghetti feeds, etc. BCAC shall make all reasonable efforts to accommodate such events and provide assistance by BCA staff.

BYHA shall have reasonable access to designated storage areas in the BCA for miscellaneous storage of BYHA equipment, gear and organization materials. The designated storage areas and access to same shall be at the determination of the BCAC.

The BYHA board or its appointed representatives retain the right to request keys in its reasonable discretion, conditioned upon full compliance with the BCAC rules by the BYHA member key holders with the availability and issuance of all keys managed and determined by the BCAC.

8. **Included Services.** Use of the BCAC Facilities by the BYHA under this Agreement includes only the normal services, utilities and equipment customarily provided by the BCAC on a routine basis such as hockey nets, scoreboard/score clock equipment, etc. and does not include items such as a crowd control personnel, police, EMTs and firefighters, etc. Any services, utilities or equipment not customarily provided by the BCAC on a routine basis shall be provided by the BYHA at its expense. If the BCAC provides such additional services (including overtime hours of its employees), utilities or equipment at the request of the BYHA, the BYHA shall understand the cost of same additional services will be included and factored into the BCA Net Operating Cost, as determined by the JFC.

The BCAC shall not be liable for damages, nor shall fees be abated nor shall the BYHA be relieved from performance of its obligations for interruption of any utilities or other services of the failure of BCAC to furnish any facilities for any cause or causes beyond the reasonable control of the BCAC. For any rink interruptions, including Zamboni outages, ice surface damage, etc. that are foreseen to be beyond a 24 hour period to correct, The BCAC shall provide communication with BYHA identifying a reasonable time frame and plan to resolve the issue. BCAC shall make all reasonable efforts and take any and all immediate measures to expedite repairs associated with rink interruptions. If rink operation repairs significantly interrupt the BYHA use of the BCA, the JFC may designate funding for alternative ice rental to accommodate BYHA operations.

The BCAC shall make all reasonable efforts to maintain and operate a skate sharpening service in the BCA.

9. **Use & Compliance with Laws, Rules and Regulations.** The BYHA shall be subject to all regulations and legal requirements as part of the Land Lease between Independent School District #31 and Beltrami County, including but not limited to, no illegal activity such as smoking, drugs, alcohol, firearms or other dangerous weapons on the premises. The BCA is a tobacco free, alcohol free environment.

The BYHA shall not use the BCA in any manner that is contrary to, or in violation of, the purposes for which the facilities are constructed and maintained. When using the BCA, the BYHA shall observe all reasonable rules and regulations as from time to time may be put into effect by the BCAC for the protection of property, general safety, comfort and convenience of all the occupants and users of the BCA and shall not use the BCA in any way that will conflict with applicable federal, state or local laws, rules, ordinances and regulations or in any way that will disparage the BCA.

Further, the BYHA or the BCAC will not use the BCA in any manner that will jeopardize the BCAC's or the BYHA's status as charitable organizations under United States Internal Revenue Code section 501(c)(3) or as an institution of purely public charity under Minnesota Statutes section 272.02, Subdivision 7. Among other attributes, an institution of purely public charity is entitled to exemption from real estate taxes.

Donations or grants received by the BYHA or the BCAC specifically designated for BCAC operations or capital improvements shall be passed on to the BCAC. Donations or grants received by the BYHA or the BCAC specifically designated for BYHA operations shall be passed on to the BYHA.

Part of the BCAC's status as an institution of purely public charity is due to the following factors and principals: A substantial part of the BCAC Facilities were acquired or developed by the BCAC through donations and government grants. The fees that will be paid by the BYHA under this Agreement may not include any amounts that would permit the BCAC to recoup capital costs that were provided by donations or grants; therefore, the benefit of the donations and grants are being passed on to the BYHA. The BCAC expects the benefits of the donations, and grants, or most of the benefits of the donations and grants, to be passed on by the BYHA to the ultimate users of the BCAC Facilities and if the BYHA does not so pass on the benefits of the donations and grants to the ultimate users of the BCAC Facilities, the BCAC would consider the BYHA to be in violation of this provision.

10. **Signs, etc.** BYHA may request, of the BCAC, the placement of signs, banners, murals, artwork, pictures, etc. in or on the BCA. Requests shall be submitted with appropriate detail and information to clearly understand the scope and intent of same request. Requests are subject to review and approval of the BCAC.

The BCA shall have a dedicated 'BYHA tack board', in a location determined by the BCAC, for BYHA to use to post information on hockey related items, such as summer camps, clinics, programs and other items that benefit BYHA membership.

The BYHA shall not cover, move, remove or otherwise tamper with any signs, banners, decoration or equipment in or on the BCA without the prior written consent of the BCAC. The BYHA shall, at its expense, repair any damages to the BCA caused by the covering, moving, removing or otherwise tampering with any signs, banners, decorations or equipment in or on the BCA, even if done with the consent of the BCAC.

The BCAC reserves the right to sell advertising space in the BCA to third parties and to have those advisements displayed during the use of the BCA by the BYHA. The BYHA may not

have any other advertisements displayed during the use of the BCA unless in compliance with uniform policies adopted, from time to time, by the Board of Directors of the BCAC.

The BYHA may have team specific team sponsors advertise in the BCA lobby during team specific home tournaments.

11. **Concession Services**. The BYHA shall have access to operate the BCA Concession Areas to the benefit of BYHA, including but not limited to, the use of concession equipment and fixtures. All concession equipment is owned and maintained by the BYHA. BYHA shall cease all concession operations and completely shut down concession equipment during the 'off season' when the BCA is not in general 'ice in' use. BYHA may operate Concession Areas during the ice out/off season for specific special BYHA events. The BCAC shall make all reasonable efforts to accommodate concession operations.

12. **Assignment, Sub-Leases and Exchanges**. The BYHA may not assign its rights or obligations under this Agreement without the written consent of the BCAC. The BCAC may not assign its rights or obligations under this Agreement without the written consent of the BYHA.

The BYHA may not sub-lease or designate use of the BCA to outside parties without the prior consent of the BCAC.

The BYHA may not sell any goods or services at or in any location within the BCA at any time to the benefit of others, or allow the scheduling and use of Primary Tenant use of the BCA that benefits others, without review and approval of the BCAC. BYHA may request outside vendors provided specific 'for profit' services for specific BYHA events, such as BYHA tournaments, provided same are reviewed and approved by BCAC.

13. **Damage of Property**. The BCAC shall not be responsible for any loss or damage to equipment or other property of the BYHA or its agents, employees or invitees caused by theft, fire, riots, acts of God or any other cause of whatever kind or nature.

The BYHA shall be responsible and liable for, and shall reimburse the BCAC for, any and all loss of, disappearance of and damages to the BCA arising out of the use of the BCA by the BYHA and its invitees during the BYHA's use, however, the BYHA is only liable for damages caused by its invitees.

The BCAC requires that the BYHA obtain its own liability and property (contents) insurance. Same required insurance shall name the BCAC as an 'Additional Insured'.

The BCAC shall maintain liability and property insurance. BYHA's liability is limited to any claims and amounts not covered by the BCAC's insurance. See also numbered paragraph 15 of this Agreement.

14. **Personal Injuries**. The BYHA shall carry liability insurance in the minimum amount of \$2,000,000.00 and provide evidence of the same to the BCAC.

The BYHA hereby releases the BCAC and agrees to indemnify the BCAC from any and all liability or responsibility for any and all liabilities, obligations, costs, damages or causes of action, including attorney's fees, resulting from any personal injuries or loss of life caused by the BYHA, its agents, employees or invitees arising out of the use of the Arena Facilities by the BYHA and its agents, employees or invitees during the BYHA's use. This covenant shall survive the expiration of or termination of this Agreement for any reason.

The BCAC shall carry liability insurance in the minimum amount of \$2,000,000.00 and provide evidence of the same to the BYHA. The BCAC hereby releases the BYHA and agrees to indemnify the BYHA from any and all liability or responsibility for any and all liabilities, obligations, costs, damages or causes of action, including attorney's fees, resulting from any personal injuries or loss of life caused by the BCAC, its agents or employees arising out of the use of the Arena Facilities by the BYHA and its agents, employees or invitees during the BYHA's use. This covenant shall survive the expiration of or termination of this Agreement for any reason.

15. Subrogation. Notwithstanding anything to the contrary in this Agreement, each party hereby releases the other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise, but only so long as this will not prejudice any actual insurance coverage) for any loss or damage that is covered by casualty insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone from whom such party may be responsible.

16. Non-discrimination. The BCAC's non-discrimination policy is herein below. The BYHA shall not use the BCAC Facilities in any manner that would be in violation of this non-discrimination policy.

Bemidji Community Arena Corporation
Non-Discrimination Policy

The Bemidji Community Arena Corporation does not and shall not discriminate on the basis of race, color, religion (creed), gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations. These include, but are not limited to, hiring and firing staff, selection of volunteers and vendors, and provision of services. We are committed to providing an inclusive and welcoming environment for all members of the staff, clients, volunteers, subcontractors, vendors, and clients.

The Bemidji Community Arena Corporation is an equal opportunity employer. We will not discriminate and will take affirmative action measures to ensure against discrimination in employment, recruitment, advertisements for employment, compensation, termination, upgrading, promotions, and other conditions of employment against any employee or job applicant on the bases of race, color, gender, national origin, age, religion, creed, disability, veteran's status, sexual orientation, gender identity or gender expression.

17. Damage or Destruction of BCAC Facilities. In the case of damage or destruction by fire or other casualty to all or any portion of the BCAC Facilities, the BCAC shall cause the damage to be repaired and the facilities to be restored with all reasonable dispatch, subject to delays beyond the reasonable control of the BCAC. The BYHA shall make all reasonable efforts

to reschedule BYHA activities during any period of time that the BCA is not usable and being repaired because of damage by fire or other casualty.

The BCAC shall not be liable for damages for failure to provide facilities during periods of repair or restoration. Notwithstanding, if the BCAC Facilities are totally destroyed by fire or other casualty or if the damage shall be so extensive that 75% or more of the Arena or 75% or more of the BCA is destroyed and if the BCAC decides not to repair or restore on the BCA site or any other site in Bemidji, the BCAC or BYHA shall have the option to terminate this Agreement. Any insurance settlements remaining shall be assigned to BYHA.

18. **Condemnation.** If the whole or any part of the BCAC Facilities shall be taken under the power of eminent domain or by purchase or other acquisition in lieu of condemnation this Agreement shall terminate with respect to the part so taken on the date ("Taking Date") the BCAC is required to yield possession thereof to the condemning authority. If the amount of any portion of the BCAC Facilities so taken substantially impairs the usefulness of the remaining portion of the facilities for use by the BYHA, the BYHA may, by notice to the BCAC delivered at least sixty (60) days prior to the Taking Date, terminate this Agreement as of the Taking Date.

All compensation or damages awarded for such taking under the power of eminent domain, whether for the whole or part of the BCAC Facilities, shall be the property of the BYHA, whether such damages shall be awarded as compensation for diminution in value of the leasehold or to the fee of the facilities.

19. **Default and Remedies.** In the event of any default by the BYHA and if the default has not been cured within thirty (30) days after written notice thereof by the BCAC to the BYHA, then the BCAC may, in addition to other rights and remedies, terminate this Agreement or terminate the BYHA's right to use of all or any of the BCAC Facilities without terminating this Agreement. Should the BCAC elect to terminate the BYHA's right to use the BCAC Facilities without terminating this Agreement, the BCAC may allow others to use the BCAC Facilities during the BYHA's use for such terms and conditions and at such fees as the BCAC in its sole reasonable discretion may deem advisable and recover from the BYHA the fees provided for in this Agreement less any actual fees collected by allowing others to use the BCAC Facilities during the BYHA's use. No remedy of the BCAC provided for herein shall be exclusive of any other remedy provided by law, and the pursuit of one remedy shall not bar the BCAC from thereafter pursuing any other lawful remedy.

In the event of any default by the BCAC and if the default has not been cured within fifteen (15) days after written notice thereof by the BYHA to the BCAC, then the BYHA may in addition to other rights and remedies, terminate this Agreement or reduce the BYHA's use without terminating this Agreement. No remedy of the BYHA provided for herein shall be exclusive of any other remedy provided by law, and the pursuit of one remedy shall not bar the BYHA from thereafter pursuing any other lawful remedy.

20. **Resolutions of Disputes.** Any dispute relating to this Agreement or its termination that the parties cannot resolve through good faith negotiations shall be subject to the following resolution procedures; provided, that, either party may seek injunctive relief pending resolution of the dispute:

- (a) **Negotiations.** The dispute or question shall first be submitted for resolution through the good faith negotiations to the BCAC Board of Directors and the BYHA Board of Directors.
- (b) **Mediation.** Any disputes that cannot be resolved by negotiations as provided in (a) above shall be subject to mediation.

(1) The mediation shall be conducted by one mediator who shall be selected jointly by the parties to the dispute within ten (10) days after any party to the dispute requests mediation. If the parties to the dispute are unable to agree upon the mediator, the mediator shall be appointed, upon the request of any party to the dispute, by the chief judge of the District Court of Beltrami County, Minnesota.

(2) The mediation shall be non-binding and shall commence within ten (10) days after the selection or appointment of the mediator. Each party to the dispute shall attend the mediation through one or more persons who have the authority to settle dispute, as selected by each parties respective Board of Directors.

(3) The expenses of the mediation shall be shared equally by the parties to the dispute. The mediation shall continue until the dispute is settled or the mediator declares by written notice to the parties to the dispute that the parties to the dispute are at an impasse and not all disputes can be resolved, but in no event shall the mediation extend beyond sixty (60), days, unless the parties mutually so agree.

(4) In all other respects, the mediation shall be conducted as determined by the mediator or as determined by the mutual agreement of the parties to the dispute.

(c) **Arbitration.** Any disputes that cannot be resolved by negotiations as provided in (a) above or mediation as provided in (b) above shall be subject to arbitration. The arbitration proceedings shall be governed by the following, unless otherwise agreed by the parties to the dispute:

(1) All arbitration hearings shall be held in Bemidji, Minnesota

(2) Any and all arbitration proceedings and any arbitration decision, unless it is necessary that a judgment on the decision be entered, shall be confidential.

(3) Any party to the dispute shall have the right to specifically enforce any arbitration award by appropriate proceedings under Minnesota Law.

(4) The dispute or controversy shall be submitted to a panel of three neutral arbitrators, all of whom shall be selected in accordance with the Minnesota version of the Uniform Arbitration Act (currently codified in Minnesota Statutes Section 572.08 et. Seq.), as existing at the time arbitration is invoked. Unless otherwise ordered by the arbitrators, the cost of the arbitrators shall be shared equally by the parties to the dispute.

(5) The arbitrator or arbitrators shall have the right to award the prevailing party its costs and expense incurred in connection with the arbitration proceedings, including reasonable attorneys' fees and expenses.

(6) The parties hereby waive any legal or equitable rights to avoid arbitration or to seek a remedy at law or in equity as an alternative to arbitration.

(7) So long as not in conflict with the above, the Minnesota version of the Uniform Arbitration Act as existing at the time arbitration is invoked, shall govern the arbitration proceedings and award.

(8) Any arbitration proceeding hereunder must be demanded within one (1) year after the claim or controversy arose. Failure to demand arbitration within such period shall constitute an absolute bar to the institution of any proceedings with respect to such controversy or claim, and waiver thereof.

(9) A party may, but shall not be obligated to, resort to arbitration in connection with a claim for which an action in equity is appropriate, such as specific performance or injunctive relief.

21. Miscellaneous.

(a) Recording. This Agreement shall not be recorded but at the request of the BYHA, the BCAC agrees to execute a short form or memorandum of this Agreement in a manner sufficient to enable it to be recorded in the governmental office in which there would be recorded a deed covering BCAC Facilities, which short form or memorandum of Agreement will set forth the use rights of the BYHA and term of this Agreement.

(b) Legal Fees. If either party is compelled to take legal action to enforce any provisions of this Agreement, the prevailing party shall be entitled to recover its costs and expenses incurred in connection with such legal action, including reasonable attorney's fees and expenses.

(c) Venue. In the event of any of the parties shall resort to legal proceedings to enforce any of the terms of this Agreement, such proceedings shall be venued in Beltrami County, Minnesota

(d) Captions. The table of contents, headings and captions are inserted for convenience of reference only and are not to be considered in the construction of the provisions hereof.

(e) Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.

(f) Waiver. The receipt of use fee of the BCAC, with knowledge of any breach of this Agreement by the BYHA or BCAC, of any default on the part of the BYHA or BCAC in the observation or performance of any of the terms, covenants or conditions of this Agreement, shall not be deemed to be a waiver of any provision of this Agreement.

(g) Agents. Neither party has taken any action or non-action which could result in a claim by any third person for any commission, brokerage fee, finder's fee or other payments based upon this Agreement.

(h) Construction. Any and all words used herein in the singular form shall include the plural form where applicable and vice versa, and any and all terms and words used herein in the neuter or masculine form shall include the other and the feminine form where applicable, and vice versa.

Although this Agreement may have been drafted by counsel for one of the parties, this Agreement has been subject to negotiation and modification prior to final execution and, accordingly, is not to be construed for or against either the BCAC or the BYHA but is to be construed as if mutually drawn according to the general tenor of the language.

(i) Severability. If any provision of this Agreement is held to be illegal, invalid or

unenforceable under present or future laws such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a legal, valid and enforceable provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible.

(j) No Partnership/Joint Venture. Any intention to create a joint venture, partnership or agency relation between the parties is expressly disclaimed.

(k) Estoppel Certificate. The BYHA agrees that at any time and from time to time at reasonable intervals, within ten (10) days after written request by the BCAC, the BYHA will execute, acknowledge and deliver to the BCAC, the BCAC's mortgagee, or others designated by the BCAC, an estoppel certificate in a form as may from time to time be provided, ratifying this Agreement and certifying the status of this Agreement.

(l) Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given: when received, if delivered by hand; or when deposited, if placed in the mail for delivery by certified mail, postage prepaid, return receipt requested, addressed to the chief executive officer of the appropriate party to the addresses set forth on the signature pages. Addresses may be changed by written notice given pursuant to this provision: however, any such notice shall not be effective, if mailed, until three (3) business days after depositing in the mail or when actually received, whichever occurs first.

(m) Expenses. Except as otherwise provided herein, each party shall bear and pay for its own costs and expenses including, without limitation, all fees and disbursements of attorneys, accountants and financial consultants.

(n) Entire Agreement. This Agreement and the exhibits now or hereafter attached, along with the Contemporaneous Agreement, referenced herein above, are the only agreements between the parties concerning the subject matter hereof and supersedes all prior agreements whether written or oral, relating thereto.

(o) Modification and Waiver. No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in written document signed by both parties (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

(p) Binding Effect. The terms, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns and shall run with BCA Facilities.

(q) Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

BEMIDJI YOUTH HOCKEY ASSOCIATION, INC.

Signed _____
Name _____

Date _____

BEMIDJI COMMUNITY ARENA CORPORATION

Signed _____
Name _____

Date _____

Exhibit "7"

BILL OF SALE

This BILL OF SALE made on April __, 2017 by Bemidji Youth Hockey Association, a Minnesota non-profit corporation ("Seller") in favor of Bemidji Community Arena Corporation, a Minnesota non-profit corporation ("Buyer").

For good and valuable consideration paid by Buyer to Seller, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereunder, Seller does hereby grant, bargain, sell, convey, transfer, assign and deliver the property consisting of (1) Seller's leasehold interest under the Lease, and any Assignments thereto, (2) all personal property related to the operation of the Bemidji Community Arena, and (3) all right, title and interest of Seller in the Bemidji Community Arena (collectively "Property"), utilized by the Seller in connection with the Bemidji Community Arena, including but not limited to, those specified on Exhibit "A" attached hereto, to Buyer.

The Seller represents and warrants to Buyer that the Seller has and Buyer shall have good and marketable title to the Property free and clear of all liens, charges, encumbrances, security interests and claims of any kind, and Seller covenants and agrees to and with Buyer to warrant and defend the sale, transfer and conveyance of the Property to Buyer against all and every person and persons.

For the consideration aforesaid, the Seller hereby irrevocably constitutes and appoints Buyer the true and lawful attorney of the Seller, with full power of substitution, and gives and grants unto Buyer full power and authority in the name of the Seller, or in the name of Buyer, at any time and from time to time, (a) to collect, assert or enforce any claim, right or title of any kind in or to the Property, to institute and prosecute all actions, suits and proceedings which Buyer may deem proper in order to collect, assert or enforce any such claim, right or title, to defend and compromise all actions, suits and proceedings in respect of any of the Property, and to do all such acts and things in relation thereto as Buyer shall deem advisable, and (b) to take all action which Buyer may deem reasonable and proper in order to provide for Buyer the benefits of or under any of the Property where any required consent of a third party to the assignment thereof to Buyer shall not have been obtained; with like power and as fully as the Seller could or might have done, hereby ratifying and confirming all and whatever Buyer shall lawfully do or cause to be done. The Seller acknowledges and agrees that such powers are coupled with an interest and shall not be revocable by it in any manner or for any reason and that Buyer shall be entitled to retain for its own account any amounts collected pursuant to such powers, including any amounts payable as interest in respect thereof.

The Seller agrees that, at any time and from time to time after delivery hereof, upon the request of Buyer, and at Buyer's expense, to execute, acknowledge or deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the better

assigning, transferring, granting, conveying, assuring and confirming to Buyer, or for aiding and assisting in the collection of or reducing to possession by Buyer of any of the Property.

Nothing herein shall be construed to modify, expand, limit or otherwise amend the representations and warranties of the parties set forth in the Agreement.

This Bill of Sale shall be binding upon the Seller and its successors and assigns, and shall inure to the benefit of Buyer and its successors and assigns.

IN WITNESS WHEREOF, the Seller and Buyer have caused this Bill of Sale to be duly executed as of the day and year first above written.

SELLER:

BUYER:

Bemidji Youth Hockey Association,
a nonprofit corporation

Bemidji Community Arena Corporation,
a nonprofit corporation

By: _____
Its: _____

By: _____
Its: _____

Exhibit "A"

The following Property:

The 57,614 square foot building/ice arena known as the Bemidji Community Arena ("Arena"), having an address of 3000 Division Street West, Bemidji, MN, and located on the real estate legally described as follows:

That part of the Northwest Quarter of the Northwest Quarter, Section 18, Township 146 North, Range 33 West of the 5th Principle Meridian, Beltrami County, Minnesota, described as follows:

The south 300.00 feet of the north 692.00 feet of the east 150.00 feet of the west 375 feet of said Northwest Quarter of the Northwest Quarter,

and including all personal property located inside the Arena, except for the concession equipment appliances which is owned by the Bemidji Youth Hockey Association and shall remain the property of the Bemidji Youth Hockey Association, all of which are located in the two designated 'Concession Stands'.

AND

Miscellaneous Building Features includes;

- Compressors, pumps, cooling tower, etc. for ice making system
- Dehumidification system
- Two (2) complete large full service Concession areas
- Bleacher seating for (+/-) 1,600 spectators
- Mezzanine seating and viewing for (+/-) 400 spectators
- Four (4) large locker rooms with showers
- Mezzanine level large meeting room
- Front Lobby with restrooms, art features, concessions, seating, etc.

AND

F.F.E. Features includes

- Zamboni, edger and misc. ice maintenance equipment
- Meeting room furniture tables and chairs.
- Hockey related equipment; nets, practice pads, etc.
- Public Address system

Bemidji Youth Hockey Association

April Annual Meeting

April 12th, 2017

Bemidji Community Arena (BCA)

Meeting called to order by President at 7:45p.m.

1. Voting for new board members
 - a. Jen Nelson, Shelley Nistler, Ryan Kieson, Jim Dewar, Bruce Bentfield are running for five spots.
 - b. Ballots passed out and members in attendance voted for one member
 - c. Top 3 vote getters got 3 year positions, other two got 2 year positions
 - d. 3 year terms – Bruce, Jim, Jen
 - e. 2 year terms – Shelley, Ryan

Adjournment Motion made by Bruce and seconded by Brian to adjourn. No further discussion, motion passed. Meeting adjourned at 8:04pm.

Bemidji Youth Hockey Association

April Board Assignment Meeting

April 12th, 2017

Bemidji Community Arena (BCA)

Board Members Present: Bruce Hasbargen, Angie Loveless, Jason Brodina, Shelley Nistler, Jim Dewar, Jen Nelson, Bruce Bentfield, Ryan Kieson

Board Members Absent: Leslie Gessner

BCA Board Members/Committee Reps/Age Group Reps/Others Present: Sarah Lundeen, Kurt Knott, Carrie Fish, Corey Rupp, Meggen Solheim, Kayla Winkler, Jason Niemi, Courtney Gifford

Meeting called to order by President at 8:05p.m.

- A. Assign new board positions
 1. Bruce accepts nomination to be President
 2. Jason accepts nomination for VP
 3. Shelley accepts nomination for treasurer
 4. Leslie accepts nomination for Secretary
 5. Jim Dewar accepts nomination for BCAC representative
 6. Ryan Accepts nomination for BCAC representative
 7. At Large members - Jen, Angie, Bruce B.
 8. Jen makes a motion to accept nominations of board positions, seconded by Angie, no further discussion motion passed
- B. Finance Committee
 1. Corey accepts nomination to be on finance committee.
 2. Shelley accepts nomination to be on finance committee
 3. Jason Accepts nomination to be on finance committee
- C. Bookkeeper Position
 1. Motion by Jason to approve Jim Marcotte as bookkeeper for BYHA bookkeeper, Seconded by Angie, no further discussion, motion passed.
- D. Committee reports
 1. HDC
 - a. 4 squirt teams - 1 A team, 2 equal B teams, 1 C team
 - b. 10u - 1 team, possible 18 girls
 - c. Pee Wee - AA, B1, B2 – B2 will play independent schedule, not district schedule
 - d. 12u - 10 skaters, maybe a few additional ones
 - e. Corey will create some language regarding girls petitioning to play with the boys teams versus just signing up for boys team
 - f. Looking at using BCA for the summer for shooting program, Chris Justice will possibly run program
 2. Grievance Committee
 - a. Looked at and addressed 2 more grievances, took appropriate actions
 - b.

Open discussion

Courtney Gifford asks if February minutes can be changed to reflect that there was no problem with the PeeWee B2 team as far as taking of girls stuff. Jenn Nelson and Shelley Nistler also confirm that nothing happened as far as a locker room problem with boys and girls on the PeeWee B2 team.

Adjournment Motion made by Jason and seconded by Angie to adjourn. No further discussion, motion passed. Meeting adjourned at 9:35pm.

Next Board Meeting **Second Wednesday of the month, May 10th, 6pm, BCA**