

DONOR CO-BRANDING AND NAMING AGREEMENT BETWEEN THE CITY OF RAPID CITY, BLACK HILLS SPORTS, AND BLACK HILLS SURGICAL HOSPITAL FOR FITZGERALD STADIUM.

This Agreement is made this 5 day of March, 2021 between BLACK HILLS SPORTS, INC (BH Sports), and the City of Rapid City, South Dakota (City) and Black Hills Surgical Hospital, LLP ("Donor").

RECITALS

WHEREAS, BH Sports is a not-for-profit corporation who in collaboration with Baseball Parents, Inc., another not-for-profit corporation, oversees and operates the Post 22 American Legion Baseball program in Rapid City, South Dakota, which program is housed and located in Fitzgerald Stadium (Stadium) also located in Rapid City; and

WHEREAS, the Stadium and all improvements thereon are owned by the City who in turn leases the Stadium to BH Sports for purposes of Post 22 Baseball events and other events; and

WHEREAS, BH Sports is engaged in a fundraising campaign for the purpose funding major renovations at the Stadium; and

WHEREAS, BH Sports has the right under its lease to name the Stadium subject to the requirements of the City's Naming Policy, and the consent and approval of City; and

WHEREAS, BH Sports desires to sell the naming rights to the Stadium to assist in funding improvements and operations and activities at the Stadium; and

WHEREAS, as part of the fundraising campaign, BH Sports has solicited donations from individuals and companies in exchange for the opportunity to name the Stadium; and

WHEREAS, Donor is willing to make a monetary donation to BH Sports in an amount hereinafter specified, in return for the right of Donor to include Donor's name in Stadium Name going forward and to use a co-branded name of Donor in conjunction with, and in substitution of, the prior Fitzgerald Stadium name, as provided herein; and

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. **Donation Amount and Term**: Donor agrees to make a donation to BH Sports in the amount of \$250,000. Donor will pay said amount in the following manner:

Donor will pay \$25,000 each year for a period of ten (10) years. Each annual payment shall be made on or before the 1st day of April of each year beginning in 2021. In the event any installment is not paid on or before the date it is due and payable, the amount will be delinquent. Delinquent amounts will bear interest from the date of delinquency to the date full payment is received at a rate equal to the prime rate (published in Wall Street Journal or similar publication) plus 1%, but in no event greater than the maximum amount permitted by applicable law.

Donor's naming rights shall be for a period of ten (10) years, however, Donor shall have the right on one hundred and eight (180) day written notice prior to expiration of the initial term, to renew this Agreement for another ten (10) year renewal term with the Parties thereafter bound throughout the renewal term to the same rights, duties and obligations set forth herein. Should Donor not exercise its right to purchase a second ten (10) year renewal term at the conclusion of the initial ten (10) year term, and another entity or person shall offer to purchase the naming rights to the Stadium, than Donor shall have the right of first refusal to match the purchase price, and other terms and conditions of the offer from the other entity or person. Further, should Donor exercise its right to purchase a ten (10) year renewal term, and at the end of the renewal term another entity or person should offer to purchase the naming rights to the Stadium, than the Donor shall have the right of first refusal to match the purchase price, and other terms and conditions of the offer from the other entity or person.

2. **Donor's Naming Opportunity:** In consideration of Donor's gift, Donor shall have the naming rights to the entire Stadium as set forth herein, and will be allowed, in addition thereto, the right to place advertising at location throughout the facility and the right to other promotional and recognition rights, all as set forth in Exhibit A. Donor shall have the right to change the Name with written consent and approval of City and BH Sports, however, in the event a Donor initiated name change is approved, than Donor agrees that all costs associated with the name change will be the sole responsibility of Donor, including, without limitation, all costs related to removal of the existing signage and the design, fabrication and installation of new signage.

3. **City Approval:** It is understood and agreed that Donor's naming right shall be permanent, but shall be subject to the City of Rapid City's approval and the City's naming policies as the same may exist at the time this Agreement is executed, or as amended by the City from time to time. A copy of the City's current Naming Policy for Parks and Recreational Facilities is attached as Exhibit B. In the event the City does not approve this Agreement, the Donor will have the option to either offer amendments to this Agreement for consideration by the City, or any monies already paid by Donor to BH Sports will be returned to Donor in full, without interest.

It is further understood that the City will retain the right to change the name following the approval of a name requested by the Donor, if circumstances change substantially so that the continued use of Donor's chosen name reflects negatively upon the City, in which case all of Donor's rights and obligations herein shall terminate.

4. **Signage:** Donor shall be entitled to prominent signing throughout Stadium as more fully detailed in Exhibit A. Donor shall be responsible for the cost of the initial design, manufacture, and installation of all of Donor's signage contemplated pursuant to this

Agreement. Donor shall further be responsible for any ongoing maintenance, repair, and/or changes, and/or replacement to its signage. The parties shall at all times during the term of this Agreement maintain all signage installed hereunder in good and operable condition. If the exterior signage installed pursuant to this Agreement is in need of maintenance or repair and the Donor fails to remedy the issue within a reasonable time, BH Sports may remedy the issue and bill the Donor for the reasonable costs of such work.

All signage for the Venue shall be designed, constructed, and installed based on mutually agreeable specifications. The Donor and BH Sports will work together in a commercially reasonable manner to develop the design of the signage and recognition items contemplated in this Agreement. The designs will be subject to the mutual approval of the Donor and BH Sports. Approval of signage designs and specifications shall not be unreasonably withheld, delayed, or denied by either party.

The signage contemplated by this Agreement will be required to obtain all necessary permits and be designed, installed, and operated in compliance with all federal, state, and city laws.

5. **Complex Usage and Promotional Activities:** Donor shall be allowed the following promotional and marketing rights in consideration of its gift:

- BH Sports, at its expense, will prominently include and display the Stadium Name and logos agreed upon herein, where appropriate, on all publications, advertisements, promotions, billboards, banners, posters, postcards, letterhead, tickets, directory listings, websites, brochures, business cards, schedules, and equipment related to Stadium or the events held in the Stadium.
- BH Sports will provide Donor's standards to any entity conducting an event at the Stadium and will cause any such entity to refer to the Stadium by the appropriate name in print, electronic, and broadcast media advertising or announcements for such events.
- To use a high-traffic portion of the Stadium during games, including tournaments and major events, without cost, for purposes of operating a booth, or table, promoting or marketing Donor's health care services.
- To conduct game day, in-game promotions, at all home games and with prior notice to BH Sports, to host special events for the benefit of Donor's Employees or the public at large, throughout the year and always subject to Stadium's availability.
- To be displayed and mentioned in all plaques, advertisements, announcements, or writings where mention is made of Stadium donors or where Stadium donors are listed or identified.
- 4 corporate seats.
- The right to continue any existing signing that Donor or its affiliates has at facility at no additional cost.

- Donor and affiliates logo with a link to Donor and affiliates websites shall be on Post 22 Website.
- Donor and affiliates shall be mentioned at home games, tournaments, and major events at the Stadium in PA announcements as major funder of Stadium.

Donor shall be responsible for any staffing of its events or activities at the Stadium and shall indemnify and hold harmless BH Sports and City from any liability that may arise out of Donor's activities at the Stadium.

Donor acknowledges that entities other than BH Sports, and other businesses, may from time to time use the Stadium for special events, and Donor has no rights to object to said use, provided it is not contrary to Donor's exclusivity rights under Section 6 of this Agreement.

6. **Exclusivity of Advertising:** No other Hospital or entity providing services similar to Donor shall be allowed to advertise at the Stadium in any fashion which promotes or advertises said hospital or entities provision of orthopedic, surgical, or imaging services.

Notwithstanding this provision, another hospital or similar health care entity may purchase an outfield fence sign, provided the sign's content only generally identifies the hospital or other entity by name, without any mention of the services provided or the quality of said services, except that advertisements on the Baseball Parent's Inc., "Championship Club" feed shall not be subject to this Agreement.

7. **Additional Sponsorship Opportunities:** The Donor recognizes that BH Sports may permit other persons or entities to sponsor portions of the venue. BH Sports is allowed to sell other sponsorships for the venue, except as specifically prohibited by this Agreement. The Donor recognizes the importance of BH Sports efforts to maximize the involvement and participation of other businesses and the community in general within the new stadium. The Donor does not desire through this Agreement to limit the ability of BH Sports to partner with other businesses to advertise and promote the stadium. Pursuant to this Section, BH Sports may enter into advertising contracts and/or sponsorship agreements with any business or organization consistent with the provisions of Section 6 of this Agreement.

8. **Default and Termination:** The following will constitute a breach and material default of this Agreement:

- (a) Failure of Donor to timely pay the donation amounts set forth in Section 1, after sixty (60) day advance written notice of default from BH Sports;
- (b) Failure of either party to correct, remedy, or cease any default or violation of this agreement; or
- (c) The commencement of bankruptcy or insolvency proceedings by or against Donor which has not been dismissed within 90 days of the commencement thereof.

In the event Donor is in breach and material default of this Agreement, including without

limitation the obligation to make payments under Section 1, then BH Sports may terminate this Agreement, and avail itself of all rights and remedies under this Agreement or existing in law and in equity. In such event, BH Sports may, without any further proceedings, grant the naming rights, signage rights and other promotional and recognition rights set forth herein, to one or more other persons or entities during any portion of the remaining Term of this Agreement. Further, in the event of such termination, BH Sports will make a good faith effort to obtain a fair fee for the naming rights and other rights set forth herein from another person or entity for the remaining Term of this Agreement and, if successful Donor agrees to pay BH Sports the difference between the remaining amounts due from Donor under this Agreement and the sum the BH Sports receives for the Naming and other rights herein from the other person or entity during the period beginning on the date Donor's rights under this Agreement are terminated and ending on the scheduled expiration date of this Agreement.

On termination, for any reason, Donor will also pay to BH Sports the cost of removing Donor's signage and other recognition items. The payment reimbursing BH Sports for its costs and expenses, as identified herein, will be made within thirty (30) days after the date on which BH Sports sends notice to Donor demanding payment. The termination and payment will be the sole remedy to BH Sports for all damages caused by Donor's default of its obligations under this Agreement. Effective on termination, Donor will cease use of any products, advertising or campaigns referencing the Stadium, and Donor shall cease to have any right or responsibilities under this Agreement.

In the event of termination based on the default and material breach of BH Sports, Donor will be entitled to all rights and remedies recognized by law or equity.

9. **Agreement Counterparts:** This Agreement may be simultaneously executed in several counterparts, each of which will be deemed to be an original having identical legal effect and may be delivered by electronic delivery of a digitized signature or by facsimile.

10. **Amendments:** No addition to, deletion from, or other modification of any of the provisions of this Agreement will be valid unless made in writing and signed by an authorized representative of each of the parties.

11. **Applicable Law; Venue; Miscellaneous Provisions:**

Applicable Law. This Agreement will be construed under the laws of the State of South Dakota, without regard to conflict of law principles.

Legal Venue. The parties agree the legal venue for any action arising out of this Agreement or incident thereto will be proper in a court of competent jurisdiction in Pennington County, South Dakota, and each party waives any objection to such venue.

Venue Management. The Donor acknowledges BH Sports shall manage the venue without input from the Donor, except as to the matters specifically identified in this Agreement. Specifically, BH Sports shall have sole control over events scheduled at the venue without regard to the Donor's preferences. In all cases, BH Sports shall undertake its management responsibilities with

diligence and commercially reasonable efforts to operate the venue so as to maximize the exposure of the venue and the Donor to the community.

No Partnership or Joint Venture. Nothing in this Agreement will be construed to create a partnership or joint venture, nor to authorize any party to act as agent for or as a representative of any other party to this Agreement. Each party will be deemed an independent contractor and no party will act as, or hold itself out as acting as, an agent for any other party.

12. **Captions:** The title of the articles, sections, and subsections of this Agreement are for convenience only, and do not define or limit the contents.

13. **Waivers:** Failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon strict adherence to that term, or any other term of this Agreement.

14. **Cumulative Rights:** All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

15. **Entire Agreement:** The parties to this Agreement acknowledge it is a negotiated agreement, they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and the terms and conditions of this Agreement are not to be construed against any party on the basis of either party's draftsmanship of this Agreement. This Agreement constitutes the entire agreement among the parties respecting the subject matter hereof, and there are no understandings or agreements among the parties respecting the subject matter hereof, written or oral, other than as set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seal the date and year above written.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Director

BLACK HILLS SPORTS, INC.

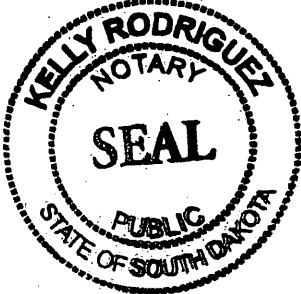
Lyle W. Tolsma
Lyle Tolsma

State of South Dakota)
) ss.
County of Pennington)

On this the 5 day of March, 2021, before me, the undersigned officer personally appears Lyle Tolsma who acknowledged himself to be the Tom Weaver of BLACK HILLS SPORTS, INC., and that as such Tom Weaver, being duly authorized to do so, executed the foregoing for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


(SEAL)



Kelly Rodriguez
Notary Public
My Commission Expires 9/30/2024

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BLACK HILLS SURGICAL HOSPITAL,
L.L.P.

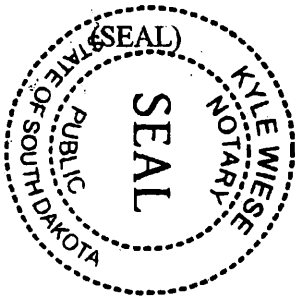


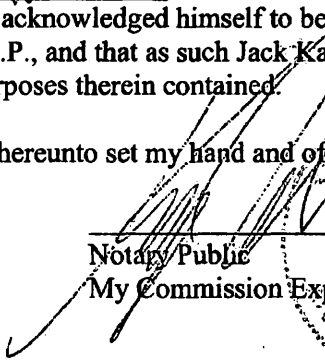
Jack Kaup

State of South Dakota)
) ss.
County of Pennington)

On this the 4 day of March, 2021, before me, the undersigned officer personally appeared Jack Kaup, who acknowledged himself to be the Jack Kaup of BLACK HILLS SURGICAL HOSPITAL L.L.P., and that as such Jack Kaup, being duly authorized to do so, executed the foregoing for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.





Notary Public
My Commission Expires December 31, 2022

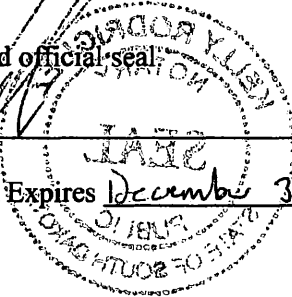


EXHIBIT A

Stadium Name

Donor designates the following name in consideration of its gift and donation:

“THE BLACK HILLS SURGICAL HOSPITAL BALL PARK”
(Floyd Fitzgerald Stadium)

OR

“THE BH SURGICAL HOSPITAL BALL PARK”
(Floyd Fitzgerald Stadium)

Additional Signage and Advertising Rights

- Right to prominently display/advertise on any marquee, if erected at Stadium or on property.
- Right to advertise/display prominently at Exterior Entrances to Stadium (size/location mutually agreed), subject to City approval.
- Right to advertise/display prominently at Exterior public doors or gates
- Right to advertise/display on directional signs under BH Sports control
- Right to display/advertise on east of Stadium exterior facing Sheridan Lake Road, subject to City approval.
- Lighted sign at Stadium, if available.
- Right to wrap up to two light poles of its choosing at no additional cost
- Right to park sports medicine trailer on premises during games, tournaments, and off-season
- At least three (3) thirty second commercials on HardHat TV. Digital Ad and link on HardHat TV. Scrolling “Sponsor Roll” with BH Sports using best efforts to have Donor name viewed 15-20 times per game on HardHat TV.
- One Full-Page advertisement in Season Program (8x10).
- Right to display signage on tension poles;
- Right to display signage on drink rails;