

2. In any alley, except for loading and unloading, and only during the time the actual loading or unloading is taking place.

B. Business District; Two Hour Parking: It shall be unlawful to park any vehicle for a period of time longer than two (2) hours between the hours of nine o'clock (9:00) A.M. and five o'clock (5:00) P.M. on any day, excepting Sundays or legal holidays when the business establishments are closed, in the business district within the following designated areas:

On East and West Main Street between Second Avenue Southeast and Second Avenue Southwest.

On First Avenue Southeast between East Main Street and the alley running in an easterly-westerly direction through blocks 10 and 7 of the original townsite.

On First Avenue Northeast between East Main Street and East Railway Street.

On South and North Central Avenue between First Street Southeast and First Street Southwest and East and West Railway Street.

On First Avenue Southwest between West Main Street and the alley running in an easterly-westerly direction through blocks 3 and 6 of the original townsite.

C. Boats, Trailers, Campers:

1. Time Limit: No person shall be allowed to park a boat, trailer, camper or other motor vehicle on any of the streets within the city at any time for a period of more than five (5) days continuously, except as provided in subsection B of this section, where no such boat, trailer, camper or other motor vehicle may be parked for a period of time longer than two (2) hours in the area designated therein.

2. Parking Boats Within Business District:

a. It shall be unlawful for any person to park or display boats of any kind or size, for any purpose whatever, within that part of the business district as outlined in subsection B of this section, unless such boat is attached to a motor vehicle by a trailer customarily used to haul boats.

b. It shall be unlawful for any person to park or display any boat within the area described above even when attached to a motor vehicle by means of a trailer customarily used for hauling boats, for more than two (2) hours.

D. Trucks: It shall be unlawful for the driver of any truck of a size or load with a carrying capacity greater than one ton to park at any time, except while actually engaged in loading or unloading, within the area designated in subsection B of this section.

E. Vehicles For Sale: It shall be unlawful for any automobile or implement dealer, or any other person, to park either new or used automobiles or other motor vehicles being held for sale upon the public streets of the city, at any time, except on days when such new or used automobiles or motor vehicles are in actual use by the owner thereof or his employees or members of his family. This does not apply to an individual who is not a car dealer, and who has his own personal car for sale.

F. Recreational Vehicles: It shall be unlawful for any person to drive on or park on any streets or alleys within the territorial limits of the city with any three (3) or four (4) wheel all-terrain vehicle or any other such recreational vehicle not designated primarily for transportation of people or property. (Ord. 12.57, 1-3-2000)

7-3-4: MANNER OF PARKING:

It shall be unlawful to park any motor vehicle or other vehicle on any street or avenue within the city, except in the following manner:

A. Parallel Parking; Exceptions:

1. Parallel Parking: All vehicles shall be parked with the right side of the vehicle next to the curb and parallel thereto, with the right side wheels of said vehicle at a distance of not greater than eighteen inches (18") from such curb, and said vehicle at least three feet (3') from any other vehicle standing on such street or avenue. (Ord. 12.57, 1-3-2000)

2. Exception, Angle Parking:

a. Angle Parking: On the easterly side of Central Avenue between the intersection thereof with First Street Southeast and the intersection thereof with Railroad Street, where vehicles shall be parked at an angle of thirty degrees (30°) with the curb, with the right front wheel of the vehicle resting against said curb. No vehicles may utilize this angle parking when the total length of the vehicle exceeds nineteen feet six inches (19'6"). The city of Cut Bank shall post signs on each end of each of these two (2) blocks notifying the public that vehicles exceeding nineteen feet six inches (19'6") in length are prohibited from parking on this side of these streets, those streets being the ten (10) blocks of South Central Avenue and North Central Avenue. All vehicles parking in this area must fit within the painted parking area and not have any part of the motor vehicle or any other cargo which protrudes into the lane of travel. Any vehicles parked in these angled parking areas, regardless of length or manner of parking, which protrude into the travel lane are in violation of this chapter. (Ord. 2009-02A, 10-18-2010)

b. Parking During Church Functions:

(1) Automobiles may be angle parked at the following designated places during church and during regular hours of worship, and at all other times parallel parking shall be required at these places:

First Baptist Church: On the westerly side of Sixth Avenue Southeast between First and Second Streets, and on the south side of First Street Southeast between Sixth Avenue Southeast and the alley in block 6 of the second addition.

Presbyterian Church: On the easterly side of Central Avenue South between Second and Third Streets, and on the south side of Second Street Southeast from Central Avenue to the alley.

St. Margaret's Catholic Church And Assembly Of God Church: The easterly side of Second Avenue Southeast between First and Second Streets and on the south side of First Street Southeast between Second Avenue Southeast and the alley in block 14 of the original townsite.

St. Paul's Lutheran Church: On the east side of Sixth Avenue Southeast between East Main Street and First Street Southeast.

(2) Residents of the areas designated in subsection A2b(1) of this section whose automobiles have been parked parallel prior to or during church functions shall not be held in violation of this section.

B. Physicians Parking In Prohibited Areas: Any regularly licensed and practicing physician, surgeon, or physician's assistant may, in cases of emergency, park any vehicle operated by such person or under such person's direction and control in prohibited areas; provided, however, that such vehicle will be removed at the earliest possible moment and shall not be locked or placed in such condition that the same cannot be moved.

C. One-Way Streets: Those persons parked on one-way streets shall park their vehicles in the direction of allowed travel at or next to the curb, at a distance not greater than eighteen inches (18") from said curb on either side of the street. (Ord. 12.57, 1-3-2000)

D. Handicapped Parking Area: The authorized driver of a vehicle may park in a designated and posted handicapped parking area located on South Central Avenue, on the north side of Second Street Southeast next to the Catholic Church facilities where there may be two (2) marked and designated handicap parking places, or any other area as approved by the city council. (Ord. 2009-02A, 10-18-2010)

E. Bus Stop: Authorized buses may utilize the designated and posted parking area located on West Main Street as a bus stop or for any other area so posted and designated by the city council. (Ord. 12.57, 1-3-2000; amd. 2006 Code)

F. Patient Parking: Two (2) designated and marked patient parking spots located on the west side of the ten (10) block of Second Avenue Southeast and more specifically in front of number 8, Second Avenue Southeast that being the Veteran's Administration Clinic Building. Said patient parking spots shall have signs posted which allow patient parking only between the hours of seven o'clock (7:00) A.M. and five o'clock (5:00) P.M. (Ord. 2009-02A, 10-18-2010)

7-3-5: VEHICLES TRANSPORTING EXPLOSIVES, POISONOUS MATERIALS:

A. Definitions:

1. Terms Defined: Unless the context requires otherwise, the following definitions apply:

EXPLOSIVES: Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such

sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

FLAMMABLE LIQUID: Any liquid which has a flashpoint of seventy degrees Fahrenheit (70°F) or less, as determined by Tagliabue or equivalent closed cup test device.

MOTOR VEHICLE: Every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state, and also includes trailers, semitrailers, and house trailers.

POISON: A substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

VEHICLE: Every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

2. Other Terms: In addition to the foregoing, in interpreting and enforcing the terms of this section, all other definitions set out in the Montana Code Annotated shall govern and apply.

B. Prohibited Parking:

1. Explosives: No person shall stand or park any motor vehicle, truck or other vehicle containing, carrying or transporting explosives in any alley or on any of the streets or avenues in the city at any time.
2. Flammable Liquids: No person shall stand or park any motor vehicle, truck or other vehicle containing, carrying or transporting a tank or other container capable of containing in excess of six hundred (600) U.S. gallons of flammable liquids in any alley or on any of the streets or avenues in the city, except on East and West Railway Street at any time.
3. Poison: No person shall stand or park any motor vehicle, truck or other vehicle containing, carrying or transporting poison in any alley or on any of the streets or avenues in the city at any time. (Ord. 12.60; amd. 2006 Code)

Helena

Chapter 11 GENERAL PARKING RESTRICTIONS

8-11-1: PARKING RESTRICTED:

- A. No person shall park any vehicle, motor vehicle, or trailer upon any street, roadway, thoroughfare or alley; or on and in any other public place for the principal purpose of:
1. Displaying such vehicle or motor vehicle for sale;
 2. Greasing, maintaining, or repairing such vehicle, except repairs that are necessitated by an emergency rendering the vehicle inoperable.
- B. No person shall park any vehicle, whether attended or unattended, upon the paved or main traveled part of any public street or thoroughfare when it is practical to stop, park, or leave such vehicle off part of said public street, and in every event an unobstructed width of the highway opposite a parked vehicle shall be left for the free passage of other vehicles, and in no event shall this be less than ten feet (10'). No person shall stop, stand or park any vehicle upon any such highway unless such vehicle can be seen by the driver of any other vehicle approaching from either direction within five hundred feet (500') and unless drivers approaching from opposite directions are visible to each other when both are at least five hundred feet (500') from the vehicle to be stopped, or parked, except in cases of justifiable emergency.
- This section shall not apply to the driver of any vehicle which is disabled while on the paved or main traveled portion of a public street, in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. In the event of a vehicle becoming disabled, every attempt shall be made to remove said vehicle from the public street, and in no event shall such vehicle be allowed to remain parked in such location longer than two (2) hours.
- C. No person shall stop, stand, or park a vehicle within an alley for a period of time longer than is necessary for the reasonably expeditious loading or unloading of such vehicle. When such vehicles are loading or unloading within a public alley, ten feet (10') of the width of the roadway shall be available at all times for the free movement of vehicular traffic. When such a vehicle is loading or unloading in an alley, the same shall not be parked in such a position as to block the driveway or entrance to any abutting property.
- D. A vehicle, motor vehicle, or trailer left on a city street, alley, roadway or public property over seventy two (72) hours without being moved shall be declared abandoned. After the vehicle has been declared abandoned, the city police shall place a five (5) day notice of intent to remove and impound the vehicle. The owner of a vehicle which has been removed and impounded will be responsible for moving and storage expenses arising from the transportation of said abandoned vehicle.
- E. Any vehicle parked at a parking meter in the city in excess of twenty four (24) hours shall be deemed a nuisance and shall be impounded and placed in storage pursuant to the provisions of section 8-21-1 of this title. (Ord. 2329, 1-16-1984)
- F. Any vehicle parked on a city street, alley, roadway or public property, including city owned or regulated parking lots, which is required to display a registration plate and none is displayed on the vehicle or the registration plate has expired, shall be deemed a nuisance and shall be impounded and placed in storage pursuant to the provisions of section 8-21-1 of this title. (Ord. 2555, 5-21-1990)

8-11-2: PARKING PROHIBITED IN SPECIFIED PLACES:

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic, or in compliance with the directions of a police or traffic control officer, or highway patrolman, in any of the following places:

A. On a sidewalk;

B. In front of a public or private driveway;

- C. Within an intersection;
- D. Within fifteen feet (15') of a fire hydrant;
- E. On a crosswalk, or within twenty feet (20') of a crosswalk when marked by painted lines and signed;
- F. Within twenty feet (20') of a crosswalk at an intersection.
- G. Within thirty feet (30') of the approach to any traffic signal, stop sign, or other traffic control device located at the side of a roadway;
- H. Within fifty feet (50') of an intersection radius, measured from a point fifty feet (50') back from the radius corner of the curb adjacent to the beginning of the intersection;
- I. Within fifty feet (50') of the nearest rail of a railroad crossing;
- J. Within twenty feet (20') of the driveway entrance to any fire station, and on the side of a street opposite the entrance to any fire station, within seventy five feet (75') of said entrance;
- K. Alongside or opposite any street excavation or obstruction when stopping or parking would obstruct the flow of traffic; or leave less than twenty feet (20') of available roadway for the free movement of traffic;
- L. On the roadway side of any vehicle stopped or parked at the edge of a curb, roadway or street;
- M. Upon any bridge or other elevated structure within the city; and
- N. At any place where official signs prohibit stopping. (Ord. 2329, 1-16-1984)

8-11-3: METHOD FOR CURBSIDE PARKING:

- A. Except as otherwise provided in this section, a vehicle parked upon any public street or thoroughfare shall be parked or stopped with the right hand wheels of the vehicle parallel to and within eighteen inches (18") of the right hand curb, or right hand pavement edge or street boundary, as long as such vehicle is facing the same direction as the traffic flow upon such street.
- B. On one-way roadways, vehicles may be parked with the left hand wheels adjacent to and within eighteen inches (18") of the left hand curb, or left hand pavement edge or street boundary, as long as such vehicle is facing the same direction as the traffic flow upon such street.
- C. Angle parking is permitted only where designated by resolution of the city commission, and appropriate signs or markers are placed showing the propriety of angle parking. (Ord. 2994, 6-21-2004)

8-11-4: PARKING PROHIBITED ON BOULEVARDS OR STREET RIGHT OF WAY:

No person shall stop, stand, or park a vehicle, motor vehicle or trailer upon any street, boulevard, or within any part of the street right of way that has not been appropriately designated by the city as an allowable parking space, or is a designated parking lane adjacent to the street edge. (Ord. 2329, 1-16-1984)

8-11-5: PARKING TRUCKS IN OFFICIALLY ZONED RESIDENTIAL DISTRICT:

A. No person shall stand or park any truck, truck tractor, trailer, semitrailer, bus, or any vehicle exceeding the GVW limit of three-fourths ($\frac{3}{4}$) ton, on the side of any street which is adjacent to an officially zoned residential district for any purpose or period of time other than for the expeditious loading or unloading of such vehicles. An officially zoned residential district is defined as any land area within the city which has been zoned R-1, R-2, or R-3.

B. The provisions of this section shall not apply to the operator of a truck, truck tractor, trailer, semitrailer, bus, or any other vehicle exceeding the GVW limit of three-fourths ($\frac{3}{4}$) ton while such vehicle is actively being used in connection with the construction or repair of buildings, service calls, or the moving of household goods, and shall not be applicable to the operator of a bus while such vehicle is parked in a designated bus stop. (Ord. 2329, 1-16-1984)

8-11-6: NO PARKING AT SCHOOLS:

A. The director of the parking and traffic division is hereby authorized to erect or direct the erection of signs indicating no parking upon that side of any street adjacent to any school property, when such parking would, in his opinion, interfere with traffic or create a hazardous pedestrian safety situation.

B. When official signs are erected indicating no parking upon that side of a street adjacent to any school property, no person shall park a vehicle in any such designated place. (Ord. 2329, 1-16-1984)

8-11-7: NO PARKING AREAS:

A. The director of public works is hereby authorized to determine and designate places in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or could cause unusual delay to traffic, including bus and trolley loading zones.

B. Such places shall be indicated by the erection of no parking signs, causing the adjacent curb to be painted yellow, or both.

C. When official signs are erected, yellow curbs are painted, or both, at hazardous or congested places as authorized herein, no person shall stop, stand, or park a vehicle in any such designated place. (Ord. 3086, 6-4-2007)

8-11-8: PARKING TIME LIMITS:

Whenever signs are erected at the direction of the director of the parking and traffic division pursuant to an ordinance or resolution of the city commission of the city which prohibits parking, establishes time limits in certain parking zones, or in any way limits or restricts parking, no person shall stop, stand or park in violation of the provisions indicated by such signs. (Ord. 2329, 1-16-1984)

8-11-9: NO PARKING OF CERTAIN VEHICLES:

It shall be unlawful at any time to park a motor vehicle giving off an offensive or disagreeable odor, or containing disagreeable and offensive matter, or any vehicle engaged in hauling gasoline, oil or other flammable or explosive matter, whether the vehicle is loaded or empty, upon any public street or alleyway within the city. (Ord. 2329, 1-16-1984)

8-11-10: PARKING FOR CAMPING PURPOSES:

It shall be unlawful for any person to park any motor vehicle, trailer or camper for camping purposes on or within any public street or alleyway within the city, or within one-half ($\frac{1}{2}$) mile of the city limits upon any public street or alleyway, except in an authorized tourist park, or upon special authorization by the city manager. (Ord. 2688, 9-27-1993)

8-11-11: PARKING PROHIBITION, EMERGENCY SNOW ROUTES; TERMINATION; PRECEDENCE:

- A. Whenever the city manager determines that parking motor vehicles on city streets shall be prohibited or restricted for street cleaning, snow plowing, snow removal or any other emergency purposes, the city manager shall put into effect a parking prohibition on designated streets by declaring it in a manner prescribed by this chapter. The prohibition or restriction shall remain in effect until terminated by announcement by the city manager, in accordance with this chapter or as may be set forth in any notice given hereunder, except that any street area which has been cleared of snow, ice or other debris for the length of an entire block shall be automatically excluded therefrom.
- B. While the prohibition or restriction is in effect, no person shall park any motor vehicle or allow any motor vehicle to remain parked on any street to which the prohibition applies.
- C. The city manager shall cause each declaration made by him pursuant to this chapter to be publicly announced by means of radio broadcasts or telecasts from stations with a normal operating range covering the city, and he may cause such declarations to be further announced in newspapers of general circulation in the city when feasible. Each announcement shall describe the action taken by the city manager, including the time it became or will become effective, and shall specify the streets or areas affected. A parking prohibition shall not go into effect until at least eight (8) hours after notice thereof has been first announced or the first publication thereof has been made in a newspaper of general circulation in the city.
- D. The city manager shall make or cause to be made a record of each time and date when any such declaration or notice is announced or given to the public in accordance with this section.
- E. Whenever the city manager shall find that some or all of the conditions no longer exist which gave rise to a parking prohibition in effect pursuant to this section, he may declare the prohibition terminated, in whole or in part, effective immediately upon announcement in the same manner prescribed for giving notice of the parking prohibition.
- F. Any provision of this section which becomes effective by declaration of the city manager shall, while temporarily in effect, take precedence over other conflicting provisions of law relating to traffic accidents, emergency travel, or authorized emergency vehicles, or emergency traffic directions by a police officer. (Ord. 2329, 1-16-1984)

8-11-12: PARKING IN HELENA PARKING DISTRICT:

No person shall stop, stand or park a vehicle within the Helena parking district in violation of the regulations adopted by the Helena parking commission which regulations are incorporated herein by this reference. (Ord. 2667, 4-12-1993)

8-11-13: REMOVAL; IMPOUNDING; RETURN OF MOTOR VEHICLES:

Motor vehicles parked in violation of any section of this chapter may be removed and impounded by any police officer, traffic control officer, or highway patrolman, in accordance with section 8-21-1 of this title. (Ord. 2329, 1-16-1984)

8-11-14: PENALTY:

Violation of any preceding section will result in a minimum fine of twenty five dollars (\$25.00), and a maximum fine of one hundred dollars (\$100.00). (Ord. 3163, 1-14-2013)

8-11-15: NOTICE OF VIOLATION:

Any violation of this chapter, unless otherwise specified, shall constitute a misdemeanor under the laws of the state of Montana and this code. A notice shall be attached to any vehicle in violation of this chapter stating that it has been parked in violation of this chapter and instructing the owner thereof to pay to the city the sum of twenty five dollars (\$25.00) for such violation. If the first such notice of violation is disregarded by failure to pay or appeal the notice of violation, a second notice shall be mailed to the owner of record of the vehicle, instructing the owner to pay to the city the sum of twenty five dollars (\$25.00). If the second notice is disregarded, the director of parking and traffic division shall institute proceedings for the prosecution of the violation in municipal court. (Ord. 3163, 1-14-2013)

8-11-16: RESPONSIBILITY FOR VIOLATION:

For any violation of this chapter, the registered owner of the vehicle at the time of the violation shall be personally responsible. It shall be no defense to such charge that the vehicle was illegally parked by another unless it is shown that at such time the vehicle was being used without the consent of the owner. (Ord. 2329, 1-16-1984)

FACILITY LEASE AGREEMENT

This Lease is made between THE CITY OF SHELBY, a Montana municipal corporation, 112 1st Street S, Shelby, Montana, 59474, hereinafter designated as "CITY", and _____ Nonprofit _____, hereinafter designated as "LESSEE". LESSEE hereby offers to lease from CITY the Gymnasium ("Gym") located within the Old Shelby Middle School at the City of Shelby, State of Montana, with a common address of _____, (the "Real Property"), upon the following terms and conditions. (This document shall hereafter be referred to as the "Lease").

WHEREAS CITY owns the Real Property.

WHEREAS the Gym is located within the Real Property and is fully described in Attachment "A" of this Agreement;

WHEREAS, the Real Property has Common Areas which use is required by public use of the Gym that are fully described Attachment "A" of this Agreement;

WHEREAS, the Real Property is vacant and not used by the public except for the Gym and Common Areas;

WHEREAS LESSEE is a nonprofit entity which desires to provide a gym facility for the community;

WHEREAS CITY desires to promote, encourage and increase the use of the Gym;

WHEREAS CITY desires to lease the Gym to the LESSEE for the LESSEE's purpose; and

WHEREAS the LESSEE desires to lease from CITY the Gym in connection with its purpose;

Now, THEREFORE, for and in consideration of the respective promises and mutual agreements made by the parties, hereinafter set forth, and under the Montana Code Annotated §7-8-4201, CITY hereby grants the LESSEE the right to use and occupy the Real Property during the term of this Agreement upon the following terms and conditions and it is hereby mutually agreed as follows:

TERMS AND CONDITIONS

1. **Term and Rent.** CITY leases to LESSEE the above Real Property for a term of five years, commencing on January 1, 2016 (the **Commencement Date**), and terminating on December 31, 2021 (the **Expiration Date**), or sooner as provided herein at the annual rental of One Dollar (\$1), payable in advance on the thirty-first day of December of each year, starting on December 31, 2015, during the term of this Lease. All rental payments shall be made to CITY at the address specified above.

Facility Lease Agreement

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2. **Option to Renew.** Provided that LESSEE is not in default in the performance of this Lease, LESSEE shall have the option to renew the Lease for additional terms of five (5) years commencing at the expiration of the initial Lease term. All of the terms and conditions of the Lease shall apply during the renewal term. The option shall be exercised by written notice given to CITY not less than thirty (30) days prior to the expiration of the prior Lease term. If notice is not given in the manner provided herein within the time specified, this option shall automatically renew.

3. **Lessee's Right of First Refusal to Purchase Real Property.** If CITY should desire to sell or otherwise dispose of the Real Property to a third party, CITY shall first give the LESSEE the right to purchase CITY'S interest in the Property upon the same terms and conditions that are contained in any bona fide offer from the third party. CITY shall give the LESSEE written notice that it has received a bona fide purchase offer immediately upon receipt of the offer, and the notice shall contain a copy of the offer. The LESSEE shall have thirty (30) days after receiving the notice in which to exercise its right of first refusal by giving written notice to CITY. If the LESSEE exercises its right of first refusal, CITY shall purchase the Property upon the terms and conditions contained in the bona fide offer of purchase; provided, however, that closing of the sale and purchase shall be conducted no later than ninety (90) days following the LESSEE's exercise of its right of first refusal.

a. If the LESSEE does not exercise its right of first refusal within the thirty-day period specified in the above paragraph of this subsection 3, then CITY may sell its interest in the Real Property to the third party. If, however, any of the terms of the sale and purchase are thereafter changed, the purchase does not close, or any other third party intends to purchase the Real Property, CITY shall once again give notice to the LESSEE in the manner specified in the above paragraph of this subsection 3, and the LESSEE shall once again have the right to exercise its right of first refusal as to the changed terms or new party.

b. Any notice to be given under the terms of this subsection shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the address of the parties set forth on the first page of this Agreement. A party wishing to change his designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in the United States Mail, postage prepaid. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

4. **Option to Purchase.** If after a period of ten (10) years, this Agreement has not been cancelled by either party, the LESSEE has the option to purchase the Real Property under a condominium conveyance to be later negotiated.

5. **Termination of Lease; Non-Waiver.** Termination of this Lease by either CITY or the LESSEE under this Paragraph shall not be deemed a waiver of any other rights or remedies which either may have against the other nor relieve CITY or LESSEE of any liability for any loss or damage suffered by reason of the failure of either party to perform any of its obligations

under this Lease arising prior to the date of such termination. Either party has the right to terminate this Lease with a thirty (30) day notice to the other party.

6. Surrender at End of Term; Waiver. LESSEE shall immediately surrender possession of the Real Property at the expiration of the Term hereof or upon its prior termination (unless LESSEE exercises its option to renew hereof). LESSEE shall return the Real Property clean and free of debris, and in good order and condition, reasonable wear and tear and damage by fire or other hazard not occurring through any willful or illegal act or omission of LESSEE, its employees, agents or invitees, alone excepted. In addition, LESSEE shall deliver to CITY all keys, plastic cards or other entry devices for the Real Property and its appurtenances.

7. Use.

- a. LESSEE shall use the Real Property solely for the benefit of the community.
- b. LESSEE shall have exclusive use of the Real Property except for such times as CITY may schedule an event. CITY will give no less than thirty (30) days' notice of use to LESSEE.
- c. Except as otherwise provided in this Agreement, the City agrees that LESSEE shall be free to manage the real property in its day-to-day operation without interference from the City including, but not limited to, scheduling, hours of operation, hiring its own employees and volunteers, and types of events except as otherwise provided for in this Agreement.
- d. LESSEE may charge fees for the use of the Real Property, but all such fees must go towards maintaining or improving the Facility including paying any loans acquired by LESSEE for improvements or maintenance of the Facility.
- e. LESSEE shall not use the Real Property for any illegal purpose or any purpose which shall constitute a nuisance nor do or suffer anything to be done in or about the Real Property which will violate any laws, ordinances, rules, regulations or orders imposed or issued by any governmental entity or agency with proper jurisdiction.

8. LESSEE's Obligations.

LESSEE shall:

- a. Not cause or permit liens of any kind (whether for taxes, materials, wages, labor or services) to be placed against the Real Property. If any such liens are filed, with or without LESSEE's knowledge, LESSEE shall promptly upon receipt of written notice of such lien, at LESSEE's sole cost and expense, take whatever action is necessary to cause such liens to be satisfied and discharged. If LESSEE fails to do so in a timely manner, CITY may, but shall not be obligated to, take whatever action is necessary to cause such liens to be satisfied and discharged, and charge LESSEE for the costs incurred by CITY including, without limitation, reasonable attorneys' fees.

b. Not use the name of CITY in any documents or promotions without the permission of the City.

c. Indemnify, defend and save harmless CITY from any and all loss, cost, expense and damages of any nature, arising out of or in any manner related to LESSEE's breach of any of its covenants and obligations hereunder or to LESSEE's use and occupancy of the Gym and/or Real Property. This indemnification provision shall survive the expiration or earlier termination of this Lease.

d. Maintain at its office true and complete books and records in connection with its management and operation of the Real Property. Such books and records shall be kept in accordance with generally accepted accounting principles. CITY shall have the right and privilege of examining said books and records at any and all reasonable times, with five (5) business days' notice.

e. Shall have regular bylaws which will include provisions for board members and succession of officers.

f. Shall conduct regularly scheduled board meetings. The board meetings shall be open to the public. Public notice of the date, time, and place of the meeting and an agenda shall be published at least 72 hours prior to the meeting. The agenda shall allow for public comment on any issue related to the Gym. Publication of the meeting notice and agenda by posting in a prominent location visible to the public using the Gym is sufficient (i.e. the outside front door commonly used by the public to enter the Gym).

g. CITY shall have the right to appoint a Director to the LESSEE's Board of Directors.

9. Care and Maintenance of Gym and Common Areas. LESSEE shall maintain in good order, condition and repair the Gym and all of its structural and mechanical elements, including the mechanical, plumbing and electrical systems, windows, roof, walls, floors, and all other items which constitute a part of the Gym including those which were installed or furnished by CITY.

a. LESSEE shall keep in force reasonable service contracts and warranties for the structural and mechanical elements of the Gym.

b. All maintenance and repairs by LESSEE shall be made in a first class, workmanlike manner by personnel or contractors.

c. LESSEE shall clean up and deposit all trash and litter from the Gym and common areas. Clean the restrooms as often as needed to provide clean, sanitary restrooms for public use. The CITY will empty the dumpsters serving the Gym and Real Property.

d. LESSEE shall not make any alterations, additions, or improvements, in, to or about the Real Property without the prior written approval of the CITY (which approval shall not

unreasonable be withheld or delayed). All such work shall be carried out at LESSEE's cost and in first class, workmanlike manner in accordance with building standards and other reasonable requirements of CITY and in compliance with all governmental orders, regulations and permits. Such work shall be performed by responsible contractors approved by CITY who will, prior to commencement of work, submit satisfactory proof of insurance coverage naming the CITY as an additional insured. Before LESSEE makes any improvements to the Gym, the Parties shall agree on a value of each improvement. If the parties cancel the lease, CITY shall pay the LESSEE the value of all improvements as agreed upon by the Parties.

e. LESSEE shall obtain the applicable permits from the responsible State of Montana agencies for any repairs or installation of any electrical, plumbing, or natural gas lines.

f. LESSEE shall obtain any other permits for the State of Montana necessary for the repairs and maintenance of the Gym.

g. Except as otherwise provided in this Lease, LESSEE shall pay all expenses related to the operation, management, development, use, occupancy, maintenance and repair of the Gym and Common Areas, including the costs of utilities utilized to operate the improvements, and insurance premiums, which arise or become due or payable during or after (but attributable to a period falling within) the Term. LESSEE hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Gym throughout the Term. The CITY shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Gym and Common Areas.

h. In the event that LESSEE fails in any material obligation it may have under this Section to maintain the Gym and Common Areas in good order, condition and repair, the CITY may give written notice to LESSEE to perform the work which is reasonably required to remedy the situation. If LESSEE fails to commence such work within twenty (20) days following the LESSEE's receipt of such notice and to diligently prosecute the same to completion, the CITY may do either or both of the following: (i) enter the Gym and Common Areas, perform such work and charge LESSEE for the cost thereof as Additional Rent; or (ii) treat such failure as an Event of Default and proceed to exercise the CITY's remedies set forth herein.

10. Assignment; Subletting. LESSEE shall not sublet the Real Property or any part thereof, nor transfer possession or occupancy thereof to any person, corporation, partnership or association, nor transfer, assign or encumber any of LESSEE's property interest under this Agreement without the prior written consent of CITY which consent may be withheld at CITY's sole discretion; nor shall any assignment hereof be effected by operation of law or otherwise without such written consent. Any such consent, if given by CITY, shall not release LESSEE from any of LESSEE's obligations under this Agreement, nor shall it serve as a waiver of the need for written consent in all future cases. LESSEE shall have the right, without the CITY's prior approval, to sublet or assign the Real Property, or any part thereof, to any subsidiary or successor of LESSEE resulting from a merger, consolidation, sale, acquisition or to any entity affiliated with LESSEE; provided, however, advance written notice to the CITY shall be required and such assignee shall comply with all the terms and conditions of this Agreement.

11. **Utilities.** All applications and connections for necessary utility services on Gym and Common Areas shall be made in the name of LESSEE only, and LESSEE shall be solely liable for utility charges as they become due, including, but not limited to, those for sewer, water, gas, electricity, and telephone services.

12. **Access.** The CITY hereby reserves the right on behalf of itself, its employees, and agents to enter the Gym and Common Areas at all reasonable times for the purposes of inspection, making repairs or improvements without liability to LESSEE for any loss of quiet enjoyment of the Gym and Real Property. Except in the event of an emergency, CITY shall give reasonable, prior notice (oral or written) before any such entry. CITY shall have the right to inspect the premises at all times during the term of this Agreement. Items not meeting the terms of this Agreement will be called to the attention of the LESSEE.

13. **Indemnification of Lessor.** CITY shall not be liable for any damage or injury to LESSEE, or any other person, or to any property, occurring in the Gym or Common Areas or any part thereof, and LESSEE agrees to indemnify and hold CITY harmless from any claims for damages, no matter how caused.

14. **Insurance.** LESSEE, at LESSEE's expense, shall maintain public liability insurance including bodily injury and property damage insuring LESSEE and CITY with minimum coverage in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each accident, and One Million Five Hundred Thousand Dollars (\$1,500,000.00) aggregate (MCA Section 2-9-108(1)(1997)). LESSEE shall be responsible to provide fire and extended coverage insurance on all leasehold improvements in the Gym and Common Areas, including all of LESSEE's equipment, trade fixtures, appliances, furniture, furnishings, and personal property in or about the Gym and Common Areas. Such insurance shall include an all-risk legal liability endorsement to cover property damage for which LESSEE is responsible.

a. Prior to commencement of the Term hereof, LESSEE shall provide evidence of such coverage and, at least thirty (30) days prior to the expiration of such coverage, evidence of the renewal thereof, all of which evidence shall be reasonably satisfactory to CITY. Such insurance shall not be cancelled without thirty (30) days prior written notice to the CITY by certified or registered mail.

b. LESSEE shall cause the CITY to be named an additional insured on the LESSEE's comprehensive general liability insurance policy.

15. **Destruction of Real Property.** In the event of a partial destruction of the Real Property during the term hereof, from any cause, CITY shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations; but, such partial destruction shall not terminate this Agreement, except that LESSEE shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of LESSEE on the Real Property. If such repairs cannot be made within said sixty (60) days, CITY, in CITY's sole discretion and option, may make the repairs within a reasonable time, this Agreement continuing in effect with the rent proportionately abated as provided in the preceding sentence, and in the event that CITY shall not elect to make such repairs, which cannot be made within sixty (60)

days, this Agreement may be terminated at the option of either Party. In the event that the building in which the Real Property may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, CITY may elect to terminate this Agreement whether the Real Property be injured or not. A total destruction of the building in which the Real Property may be situated shall terminate this Lease.

16. LESSEE's Default.

a. **Hazardous Conditions.** Failure of LESSEE to perform or observe any other covenant or condition of this Lease which is of such nature as to create or cause a situation which is materially hazardous to CITY or to other persons or businesses which may result in civil or criminal penalties being imposed upon CITY or LESSEE. LESSEE shall cure such default as soon as possible but in no event later than forty-eight (48) hours after receipt of notice thereof, if such default is capable of cure within forty-eight (48) hours. If more than forty-eight (48) hours are required to cure such default, then LESSEE shall not be deemed to be in default hereunder if LESSEE shall commence or make arrangements to commence such performance within said period and thereafter proceeds diligently to prosecute the same to completion. If CITY is unable to serve notice on LESSEE within thirty (30) days, after making reasonable efforts to do so, CITY may, at its option, correct such condition and charge LESSEE for the cost thereof as Additional Rent or exercise any other of Lessor's remedies herein set forth;

b. **Non-monetary Default.** Failure by LESSEE to perform or observe, in any material respect, any of its other covenants or conditions contained in this Lease, which failure shall continue for a period of thirty (30) days after LESSEE's receipt of written notice thereof from CITY; provided, however, that if LESSEE's obligation is of such a nature that more than thirty (30) days are required for its performance, then LESSEE shall not be deemed to be in default hereunder if LESSEE shall commence such performance within said thirty (30) day period and thereafter proceeds diligently to prosecute the same to completion;

c. **Unauthorized Removal of Property.** Any removal or attempted removal, without the prior authorization of CITY, of any of LESSEE's fixtures, equipment, appliances or personal property from the Real Property for any reason other than in the normal and usual operation of LESSEE's business; and

d. **Assignment for Benefit of Creditors.** An assignment by LESSEE for the benefit of creditors or the appointment of a receiver for LESSEE by legal proceedings or otherwise.

17. **CITY's Remedies on Default.** If LESSEE defaults in the performance of any of the other covenants or conditions in the Agreement, then CITY may terminate this Lease and all rights of LESSEE under this Lease by written notice as provided for in this Agreement. LESSEE shall then quit and surrender the Gym and Common Areas to CITY, but LESSEE shall remain liable as hereinafter provided. If this Agreement shall have been so terminated by CITY, CITY may at any time thereafter resume possession of the Gym and Common Areas by any lawful means and remove LESSEE or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

No act of CITY shall be construed as terminating this Agreement except written notice given by CITY to LESSEE advising LESSEE that CITY elects to terminate this Agreement. In the event CITY elects to terminate this Lease, CITY may recover from LESSEE any amount necessary to compensate CITY for all detrimental proximately caused by LESSEE's failure to perform its obligations under this Lease.

18. **Attorney's Fees.** In case suit should be brought for recovery of the Gym and Common Areas, or for any sum due hereunder, or because of any act which may arise out of the possession of the Real Property, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fees.

19. **Exculpation.** CITY shall not be liable for any injury or damage to any property at any time on or about the Real Property from any cause whatsoever (including, but not limited to, water, rain, snow or ice which may leak into or issue from the Real Property or from pipes or plumbing in the same), excepting any injury or damage resulting from the willful, negligent or illegal conduct of CITY, its employees, agents or invitees.

20. **Environmental Responsibility.** LESSEE shall not sell, use, store or release into the environment in or around the Real Property any hazardous or toxic substance or waste in violation of any applicable rules, order, regulation, law, statute or the like. LESSEE shall defend, indemnify and hold harmless CITY from and against any claims, demands, losses, costs, expenses or liabilities caused by any breach by LESSEE of this obligation. This indemnification shall survive and continue after the expiration or termination of this Lease.

21. **Waiver of Nonperformance.** Failure by either CITY or LESSEE to exercise any of their respective rights hereunder upon nonperformance by the other party of any condition, covenant or provision herein contained shall not be construed as a waiver thereof, nor shall the defective performance (or waiver of nonperformance) of any such condition, covenant, or provision by the other party be construed as a waiver of the rights of the non-defaulting party as to any subsequent defective performance or nonperformance hereunder.

22. **Unavoidable Delay.** In the event that either party shall be delayed or hindered in, or prevented from, the performance of any work, service or other act required under this Lease to be performed by the party and such delay or hindrance is due to strikes, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered, then performance of such work or other act shall be extended for a period equivalent to the period of such delay provided that the party so delayed, hindered, or prevented provides immediate written notice thereof to the other party in accordance with the notice provisions of this Lease and specified therein the period of such delay and the cause thereof. The provisions of this Paragraph shall not operate to excuse LESSEE from the prompt payment of Rent.

23. **Applicable Law.** It is mutually understood and agreed that this Lease shall be interpreted in accordance with the laws of the State of Montana and that no presumption shall be

deemed to exist in favor of or against either party hereto as a result of the preparation or negotiation of the same.

24. **Severability.** If any particular term, covenant, or provision of this Lease shall be determined to be invalid and unenforceable, the same shall not affect the remaining provisions of this Lease which shall nevertheless remain in full force and effect.

25. **Notices.** All notices, requests, demands, and other communications required or permitted under this Lease (“**notices**”) shall be in writing, signed by or on behalf of the party giving notice and shall be deemed to have been given as follows: (a) if **personally delivered**: on the date of actual delivery to CITY or to LESSEE; or (b) if **mailed**: on the date upon which any notice shall have been received as shown by a Certified or Registered Return Receipt or other evidence of receipt if sent by a nationally recognized overnight courier service. The following addresses shall be used for the foregoing purposes:

CITY: City of Shelby
 112 1st St. S.
 Shelby, MT 59474

LESSEE: _____

Provided, however, that either party hereto may change its address for such purpose from time to time by giving written notice of such changed address to the other party.

If notice is given by Certified Mail or Registered Mail or nationally recognized overnight courier service and the same is returned marked “Refused” or “Unclaimed,” service shall be deemed to have been given on the first business day following the date of mailing the same. CITY shall be under no duty to post the Real Property, except as otherwise specifically provided herein.

26. **Subordination.** This Lease is and shall be subordinated to all existing and future liens, mortgages, deeds of trust, ground leases, hypothecations, security devices and encumbrances (“**Security Instruments**”) against the Real Property now or hereafter placed upon the Real Property, to any and all advances made under any of said Security Instruments. LESSEE covenants and agrees to execute and deliver, upon demand, those instruments reasonably necessary to effect such subordination. **Self-executing:** The agreements contained in this Paragraph shall be effective without the execution of any further documents; the power given herein is coupled with an interest and is irrevocable. Provided, that upon written request from a Lender or CITY in connection with a sale, financing or refinancing of the Premises, LESSEE and CITY shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or other relevant terms provided for herein.

27. **Non-Discrimination.** The undersigned hereby agrees that this facility shall not be used in any manner that would discriminate against any person or persons on the basis of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin.

28. **Entire Agreement.** This Lease constitutes the entire contract between the parties hereto and there are no understandings, promises, representations or warranties, oral or written, relating to the subject matter of this Lease, which exist or bind any of the parties hereto, their respective heirs, executors, administrators, successors, or assigns, except as set forth herein. No amendment, change or addition to this Lease shall be binding upon CITY or LESSEE unless reduced to writing and signed by both parties.

Signed this _____ day of _____, 2015.

CITY:

LESSEE:

By:

By:

(Print Name and Title)

(Print Name and Title)

Address

Address