

THIS AGREEMENT made this 20th. day of December, 1993 A.D.

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter referred to as the "Town"

- and -

BOARDTRACK RACING INC.

Hereinafter referred to as the "Boardtrack"

- and -

PETER JUNEK

Hereinafter referred to as "Junek"

WHEREAS the Town has entered into an Agreement with Junek whereby Junek donated a cycling velodrome (the "Velodrome") to the Town (the "Donation Agreement");

AND WHEREAS the Town has accepted the donation of the Velodrome upon certain terms and conditions;

AND WHEREAS Boardtrack is desirous of using the Velodrome which is located on the former outdoor skating rink in the Fonthill Park (the "Park");

AND WHEREAS Junek is guaranteeing the covenants and obligations of Boardtrack;

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the respective covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is mutually acknowledged), the parties covenant and agree as follows:

(1) Provided that Junek has successfully transferred title of the Velodrome to the Town and complied with all covenants and conditions contained in the Donation Agreement, the Town shall grant Boardtrack the exclusive use of the Velodrome for the period January 1, 1994 to and including December 31, 1998 (the "Term") and upon the terms and conditions contained herein.

(2) (a) If the Town desires to renew this agreement for a further term commencing after the expiration of the Term, the Town shall give to Boardtrack sixty (60) days notice to that effect in writing before the expiration of the Term (the "Notice"); and if Boardtrack also wishes to renew this agreement for a further term, then it shall acknowledge same in writing to the Town within ten (10) days of the delivery of the Notice.

(b) If Boardtrack exercises its option to renew this agreement, then this agreement may be renewed provided that mutually agreeable terms and conditions for such renewal have been negotiated no later than the expiration date of the Term, unless an extension for such negotiations is granted by the Town in writing.

(c) If any of the following should occur, then this agreement shall terminate at the end of the Term:

- (i) Boardtrack decides not to renew this agreement or does not exercise its option within the required time as set out in subparagraph 2 (a);
- (ii) Boardtrack and the Town cannot mutually agree to a renewal of this agreement within the time as set out in subparagraph 2 (b);
- (iii) the Town decides not to renew this agreement.

(d) Upon the expiration of the Term, or any permitted renewal thereof, and if the Town so directs Boardtrack in writing to do so, Boardtrack covenants and agrees, at its expense, to remove the Velodrome within one hundred and twenty (120) days of the expiration of the Term or any such renewal thereof, or within any greater period as permitted by the Town in writing.

(3) Boardtrack covenants and agrees that the Velodrome shall not be used for any purpose other than as a cycling velodrome and uses accessory thereto and Boardtrack shall not do or permit to be done on the Velodrome or at the Park anything which may:

- (i) constitute a nuisance;
- (ii) cause damage to the Velodrome or the Park;
- (iii) cause injury or annoyance to occupants of neighbouring premises;
- (iv) make void or voidable any insurance upon the Velodrome or the Park; or,
- (v) constitute a breach of any by-law, statute, order or regulations of any municipal, provincial or any other competent authority relating to the Velodrome or the Park.

- (4) Boardtrack covenants that it shall, at its expense, be responsible for the following:
- (i) preparation of the Velodrome and surrounding hillside prior to scheduled use;
 - (ii) cleanup of the Velodrome and surrounding area following scheduled use;
 - (iii) directing vehicles away from the Park to alternative parking locations so as not to interfere with the public use of the swimming pool, ball diamond or general Park area;
 - (iv) grounds maintenance on the hillside directly south of the Velodrome;
 - (v) cleanup of the infield of the Velodrome; and,
 - (vi) ongoing maintenance and repairs that may be required to the Velodrome structure itself.

- (5) Boardtrack shall assume all liability and responsibility for any maintenance, repairs, vandalism or injury which may occur as a result of the operation of this Velodrome and shall be responsible for the proper supervision of all activities conducted at the Velodrome.

- (6) Boardtrack shall provide a program of events and scheduled activities for the Velodrome which shall be submitted to the Town in order to avoid conflict with other special events which may be conducted at the Park. All such scheduled activities must be approved in writing by the Town.

- (7) Boardtrack shall be permitted to:
- (i) place signs, advertisements or other such notices around or on the velodrome for the purpose of raising money for the operation of same; and,
 - (ii) charge an admission fee for those persons attending the events at the Velodrome,

provided that Boardtrack has received prior written approval from the Town for such signs, advertisements, notices, fees or otherwise. In addition, no such other signs, advertisements or notices of any matter shall be inscribed, painted or fixed by Boardtrack on the Velodrome unless same have been approved in writing by the Town.

- (8) Any admission fees charged by Boardtrack shall be nominal and shall only be for the purpose of assisting in the payment of expenses, maintenance and operating costs of the Velodrome. All events, activities or otherwise carried out at the Velodrome or making use of same which accrue or may accrue revenues in excess of monies required to meet expenses, maintenance and operating costs, shall be approved by the Town in writing and such excess revenues shall be shared by Boardtrack and the Town in such proportions as the two parties mutually agree to in writing. Any profits related directly to the Velodrome itself shall be the property of the Town unless otherwise agreed to by the Town in writing.

- (9) (a) Boardtrack shall, at all times during the term of this agreement, provide and keep in full force and effect, at its own expense, a comprehensive general liability insurance policy in an amount not less than two million (\$2,000,000.00) dollars providing coverage for damages for personal injury, including death, and for property damage. The Town shall be named as a co-insured in this insurance policy and said policy shall be satisfactory to the Town in respect of form and issuer.

(b) Boardtrack shall provide the Town with a copy of this required insurance policy which said policy shall state that it will not be changed or cancelled without thirty (30) days prior written notice to the Town. In addition, copies of all renewals shall forthwith be provided to the Town.

(c) If Boardtrack fails to obtain the proper insurance as herein provided or fails to provide forthwith copies of the insurance policies or copies of renewals of same, before its expiration, termination or other revocation, or should the policy of insurance be terminated, revoked or otherwise expire, the Town may treat such failure as default pursuant to paragraph 12 of this Agreement or it may proceed to obtain the required insurance for the benefit of the Town or Boardtrack or both of them, as the case may be, for such period of time as the Town deems necessary and any premium paid by the Town shall be payable by Boardtrack on demand.

(10) Boardtrack will be given access to a source of electric power and to storage space for tools and equipment, if required. The Town may impose a charge to recover the cost of electric power consumed by Boardtrack.

(11) Boardtrack hereby indemnifies and saves harmless the Town from and against all liability, losses, damages, actions, causes of action, claims, suits, demands, expenses or costs whatsoever which may be due to or arising out of any breach by Boardtrack of any provision, representation, warranty, covenant or condition of this agreement or which may arise, either directly or indirectly, by reason of any act, neglect or refusal of Boardtrack, its agents, invitees or licensees during the operation or use of the Velodrome.

(12) If Boardtrack should be in breach of any representation or warrant or should be in default in the observance or performance of any covenant or condition on its part herein contained and should Boardtrack fail to correct or rectify such breach or default within thirty (30) days of receiving written notice of such default from the Town, the Town may terminate this agreement at its sole discretion without prejudice to any rights of the Town which had accrued hereunder before such cancellation.

(13) Junek hereby absolutely and unconditionally guarantees to the Town the observance and performance of the covenants, agreements, terms and conditions herein contained by Boardtrack and Junek shall be liable to the Town for any default in the observance or performance by Boardtrack of any of the covenants, agreements, terms or conditions. Junek covenants and agrees that this guarantee shall continue in full force and effect throughout the term of this agreement, or any renewal thereof, unless otherwise agreed to by the Town in writing.

(14) Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if conveyed by personal delivery, or if mailed by registered mail to the Town at:

The Corporation of the Town of Pelham
20 Pelham Town Square
P. O. Box 400
FONTHILL, Ontario
L0S 1E0

or such other address as the Town may from time to time designate in writing, and to Boardtrack and Junek by personal delivery, or by mailing by registered mail, addressed to:

Mr. Peter Junek
R. R. #1
ST. CATHARINES, Ontario
L2R 6P7

or any other such address that Boardtrack or Junek may from time to time designate in writing and every such notice shall be deemed to be given upon the day it was so delivered or on the third day after the date upon which it is mailed by registered mail.

(15) This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter hereof. Any amendments to this agreement shall be made in writing and shall be signed by all parties hereto. Any waiver of any provision of this agreement must be in writing by the party waiving such provision and no waiver of any of the provisions of this agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

(16) If any term, clause or provision of this agreement shall be adjudged to be invalid, the validity of any other term, clause or provision shall not be affected, and such invalid term, clause or provision shall be deleted from this agreement.

(17) This agreement is not assignable without the consent of the Town in writing.

(18) This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

(19) This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, transferees and permitted assigns.

IN WITNESS WHEREOF the parties hereto have set their hands and seals or affixed their corporate seals duly attested to by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED

(THE CORPORATION OF THE TOWN OF PELHAM

(Andersen

(MAYOR

(Mary Hackett

(CLERK

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(BOARDTRACK RACING INC.

(Peter Junek

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(Peter Junek

(PETER JUNEK

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Karen Elliott

Witness as to the signature of
Peter Junek