

THE CORPORATION OF THE  
TOWN OF PELHAM  
BY-LAW #3521 (2014)

**Being a by-law to authorize the Mayor and Clerk to execute a Licence Agreement between the Corporation of the Town of Pelham and the Pelham Pirates Junior Hockey Club Inc. for the use and occupation of the Licensed Arena on certain terms and conditions as set out in the Agreement.**

WHEREAS Council for the Town of Pelham is the registered owner of the lands as described in Schedule "A" attached hereto;


AND WHEREAS Council deems it desirable to enter into a Licence Agreement regarding the use of said lands;

AND WHEREAS the use of said lands by the Licensee will result in a net benefit to the Town;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT a Licence Agreement for the use of the lands described in the Agreement appended hereto, the lands being more particularly described in Schedule "A" of Said Agreement, is hereby authorized; and
- (2) THAT the Mayor and Clerk (or Deputy Clerk) be and are hereby authorized to execute all documents necessary to complete the transactions.

READ A FIRST, SECOND AND THIRD TIME  
AND FINALLY PASSED BY COUNCIL THIS  
21<sup>st</sup> DAY OF JULY, 2014 A.D.

  
D. AUGUSTYN, MAYOR

  
JORDAN MAMMOLITI, DEPUTY CLERK



## LICENCE AGREEMENT

THIS AGREEMENT made as of the 21<sup>st</sup> day of July 2014

### BETWEEN:

**The Corporation of the Town of Pelham**  
(hereinafter called the "Licensor" or "Town")

Of The First Part,

- and -

**Pelham Pirates Junior Hockey Club Inc.**  
(hereinafter collectively called the "Licensee")

Of The Second Part,

Collectively hereinafter called the "Parties"

**WHEREAS** the Town is the owner of the lands known as the Pelham Arena (the "Arena") located at 1120 Haist Street, Pelham, Ontario (the "Lands");

**AND WHEREAS** the Licensee is a not for profit organization committed to supporting the growth and development of Junior B Hockey in the province of Ontario, and a copy of the Articles of Incorporation of the Licensee are attached as Schedule "D" to this Licence Agreement;

**AND WHEREAS** the Licensee is desirous of obtaining a licence to occupy the Arena;

**AND WHEREAS** in accordance with By-law #3521 (2014) adopted by Council for the Town of Pelham on the 21<sup>st</sup> day of July, 2014, the Licensor has agreed to grant a license to the Licensee to use and occupy the Licensed Arena on certain terms and conditions set out herein;

**NOW THEREFORE** in consideration of the payments, covenants, terms, warranties, conditions and provisos contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement and in any schedules that may form part of this Agreement, unless there is something in the subject matter or context inconsistent therewith or defined elsewhere in this Agreement, the following terms and expressions have the following meanings.

- 1.1. "Agreement" means this agreement and the schedules attached thereto as at the date hereof and as amended from time to time, in writing;
- 1.2. "Business Day" means a day other than a Saturday, Sunday, statutory holidays, or statutory vacation day that is observed by the Town of Pelham.
- 1.3. "Town" means the Corporation of the Town of Pelham as well as any and all of its elected officials, representatives, officers, employees, servants, consultants, agents and contractors (other than the Licensees)
- 1.4. "Council" means the Council of the Town of Pelham;
- 1.5. "Concessions" means food, non-alcoholic beverages prepared and sold at the Concessions Stand. Concessions shall also include merchandise displaying the Junior B Hockey Team logo, sold at the Arena from the Concessions Stand;
- 1.6. "Concessions Stand" means the room designated in the Arena for the sale of Concessions.

- 1.7. "Licensee" means the Licensee as well as any officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign and invitee of the Licensee or of any person permitted or allowed by the Licensee to enter upon or use the Arena.
- 1.8. "Permitted Uses" means those uses more particularly described in clause 2;
- 1.9. "Junior B Hockey Team" means the hockey team operated by the Licensee known as the "Pelham Pirates".

## 2. GRANT OF LICENSE

- 2.1. The Licenser hereby grants to the Licensee the licence (the "Licence") to use the Arena solely and actively for the purpose of Junior B hockey games, hockey tournaments, clinics and practices and for no other purpose whatsoever, for a term of Two (2) years, commencing on August 1, 2014 and ending on August 1, 2016 (the "Term"), unless terminated early in accordance with the terms of this Agreement.
- 2.2. The Licenser and Licensee acknowledge that the Licenser is in the process of assessing the feasibility of constructing a new arena complex on Town lands in the vicinity of Rice Road and Regional Road 20. The Licenser anticipates that if approved by Town Council, the new arena would be constructed and operational in the fall of 2016. The Licenser and the Licensee agree that should the Licenser proceed with the construction of the new arena complex, the this Licence shall be automatically extended for a term of FIVE (5) years so that the Licensee shall operate its Junior B hockey program at the new arena for a minimum of FIVE (5) years following completion of the new arena. All terms of this Licence shall then apply to the use of the new arena complex by the Licensee, with the proviso that the Priority Use Areas shall be revised to reflect the design and construction of the new arena and a new Schedule "A" shall be created, and that the Licensee shall be granted a right of first refusal to sell Concessions in the new arena from the Concessions Stand.
- 2.3. The Licenser agrees that it shall endeavor to have the new arena complex completed for the commencement of the 2016 hockey season. However, should completion of the new arena complex be delayed, the Licensee agrees to continue to operate from the Arena pending completion of the new arena complex and that the Licenser shall not be responsible for any losses incurred by the Licensee as a result of the delay in completion of the new arena complex. The Licenser agrees that should construction of the new arena complex not be commenced before the 31<sup>st</sup> day of December, 2015 then the Licensee shall have the option of terminating this Licence Agreement at the end of the initial two year term without penalty. Should the Licensee not be able to operate from the new arena complex for the entire 2016 - 2017 season, then the parties shall have the option of extending the term of the Licence Agreement for one additional year.
- 2.4. It is acknowledged and agreed by all parties hereto that the Licensee shall have priority use of that portion of the Arena comprised of a dressing room and space for a trophy case and promotional displays, and of the Concessions Stand as set out in Schedule "A" (all such portions collectively referred to as the "Priority Use Areas"). The Licenser agrees to install a portable building adjacent to the Arena for use as a change room for the Licensee prior to the commencement of the 2014 Junior B hockey season. The installation of the change room shall be done at the sole expense of the Licenser provided that the Licensee does not terminate this Licence before the expiry of the initial seven year term. In the event that the Licensee should terminate this Licence prior to the expiration of this agreement, then the Licensee shall sign all such documents as are necessary to effect the transfer of ownership and control of the Junior B Hockey Team to the Licenser, subject to Ontario Hockey Association approval, so that the Licenser could operate the Junior B Hockey Team utilizing a community board. Should the Licensee transfer ownership of the Junior B Hockey Team during the initial two year term of this Licence Agreement, the transfer shall be subject to the transferee accepting the terms of this Licence Agreement and agreeing not to transfer the Junior B Hockey Team to another location for the initial two year term of the Licence Agreement.

- 2.5 The Licenser and the Licensee agree that the Concessions Stand shall be operated by the Licensee during the use of the Arena by other hockey, figure skating and lacrosse teams. The minimum hours of operation of the Concessions Stand and the scheduled operations of the Concession Stand during the term of this licence are as set out in Schedule "C" attached hereto.
- 2.6 The Licensee acknowledges and agrees that its right to use the Arena is non-exclusive and that the Arena shall be available for use by the public and the Licenser when there are no games or practices scheduled by the Licensee.
- 2.7. The Licenser acknowledges and agrees that the Licensee shall have the exclusive right to operate all concessions at the Arena during the term of this Licence.
- 2.8 The Licenser and the Licensee agree that the primary home game dates for the Licensee shall be Friday evenings and Tuesday evenings. The Licenser and Licensee shall finalize the schedule for home games and practices prior to September 1 in each year of the term. The Licensee agrees to co-operate with the Licenser in scheduling games and practices so as to cause the least disruption to the other users of the arena, including but not limited to the Pelham Minor Hockey Association and the Niagara Centre Skating Club.
- 2.9. The Licensee accepts the Arena in their present condition and acknowledges and agrees that the Licenser has not given any representation, warranty or condition, express or implied, in fact or by law, as to the state, quality or condition in, on, or of the Arena, whether with respect to environmental matters or otherwise, or that the Arena are suitable for any particular use or purpose (including, but not limited to any use permitted by this Agreement) or as to any other matter or thing, whether or not related to any of the foregoing. Furthermore, the Licensee assumes any and all risks relating to the physical condition of the Arena, including the surface and subsurface conditions thereof. Neither the Licensee nor any permitted occupant shall have any recourse to the Licenser as a result of the nature or condition of the Arena, whether or not the Licenser has or had actual or imputed knowledge of such nature and condition as at the commencement date of this Agreement or at any other time during the Term or any renewal thereof. The Licensee acknowledges and agrees that the Licensee shall be an occupier pursuant to the Occupiers' Liability Act (Ontario), as amended.
- 2.10. The Licenser shall provide to the Licensee the relevant policies, and any updates to the policies, regarding the use of the Arena (see Schedule "B").
- 2.11. Licence not a leasehold interest - No legal title or leasehold interest in the Arena shall be deemed or construed to have been created or vested in the Licensee by anything contained in this Agreement. The Licensee will not register this Agreement or notice thereof against title to the Lands or any part thereof.

### 3. FEES PAYABLE BY LICENSEE

- 3.1. The Licensee shall pay to the Licenser a nominal licence fee (the "Licence Fee"), without deduction, abatement or set-off, of \$1.00 (One dollar) per annum.
- 3.2. In addition to the Licence Fee, the Licensee shall be responsible to pay for ice time used at the ice rental rates set by the Town. The ice time rental rates are subject to change from time to time, with no prior notice.
- 3.3. The Licensee covenants and agrees to pay to the Licenser any taxes (other than realty taxes), increased annual operating costs or other additional costs imposed on or incurred by the Licenser or the Lands as a result of the grant of this Licence or as a result of the use by the Licensee of the Arena. Except as otherwise expressly stated herein, it is intended that this Agreement and the Licence Fee are to be completely net and carefree to the Licenser, that the Licenser is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the use of the Arena or the contents thereof or the business carried on therein, and that the Licensee shall be responsible for and pay all charges, impositions, costs and expenses of every nature and kind relating to the Arena and the use thereof, without deduction, abatement or set-off.
- 3.4. The Licenser shall have the same rights and remedies in the event of default in payment of any taxes (other than realty taxes), fees and/or charges, expenses or costs payable by the Licensee hereunder as it would have in the case of the Licensee's default in the payment of the Licence Fee. If the Licensee fails to pay any amount when due under this

Agreement, including telephone charges, taxes (other than realty taxes), capital Improvement or contribution payments, and additional fees and/or charges, expenses or increased annual operating costs, such unpaid amount shall bear interest, payable as an additional charge, at a rate of twelve percent (12%) per annum, calculated monthly.

#### **4. TAXES**

- 4.1. The Licensor shall be responsible for all realty taxes levied, charged or assessed against the Arena by municipal and provincial authorities.
- 4.2. The Licensee shall promptly pay, before delinquency, to the taxing authorities or to the Licensor, if it so directs, any taxes, rates, duties, levies and assessments and similar charges (other than realty taxes) imposed or assessed against or in respect of the operations at, occupancy of, or conduct of business in or from the Arena by the Licensee.

#### **5. UTILITIES**

- 5.1. The Licensor shall be responsible for all rates and charges for utilities, if any, used in connection with the Arena, save and except that the Licensee shall be responsible for and shall pay all costs, rates and charges in connection with the telephone and team specific technological requirements.

#### **6. ENTRY BY THE LICENSOR**

- 6.1. This Agreement is subject to the right of the Licensor to enter onto the Arena at any time to inspect the Arena. Without limiting the foregoing general right of the Licensor to inspect or any other right of the Licensor, the Licensor shall be permitted to enter the Arena from time to time for the purpose of making repairs, alterations or improvements to the Arena or to remove any article or remedy any condition which in the opinion of the Licensor would be likely to lead to cancellation of any policy of Insurance on the Lands, the Arena or any part thereof, and the Licensee shall not be entitled to any compensation whatsoever for any inconvenience, nuisance or discomfort occasioned thereby. Any such entry by the Licensor shall not be deemed to be a re-entry.
- 6.2. Notwithstanding anything herein contained, the Licensor shall have unrestricted access to the Arena in an emergency. In the event that emergency work is necessitated as a result of the act, omission or neglect of the Licensee, such work may be undertaken immediately, without notice, by the Licensor and all reasonable costs, expenses and expenditures of the Licensor of such emergency work shall be borne by the Licensee and payable forthwith upon written demand by the Licensor, and the Licensor shall have no liability to, or obligation to compensate, the Licensee for any loss or damage whatsoever resulting from such action by the Licensor. Without limiting the generality of the foregoing, the Licensor may suspend for such period of time as it deems necessary in its sole discretion or terminate the Licence hereunder in an emergency, or whenever in its sole opinion such suspension or termination may be necessary to ensure the safety of life, or of a structure, or of a neighbouring property, or whenever in its sole opinion the use of the Arena or any part or parts thereof are being carried out in an unsafe manner, and the Licensor shall not be responsible for any loss, expense, costs, charges, damages, indemnifies and/or liability which may be sustained, paid or incurred by the Licensee or any other person or persons, by reason of such suspension or termination by the Licensor.

#### **7. WARRANTIES OF AUTHORITY OF LICENSEE**

The Licensee expressly acknowledges, agrees and warrants as follows:

- 7.1. The Licensee is not prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Licensee under this Agreement by any agreement, constating documents, constitution, legislation, statute, act, regulation, order or otherwise.
- 7.2. To the best of the Licensee's information and belief and after making diligent inquiries, the Licensee is not aware of any material facts or circumstances having a bearing upon its ability to perform or comply with its obligations under this Agreement.

#### **8. REPORTING**

- 8.1. Reporting - The Licensee and the Licensor agree to meet semi-annually to review the programming, activities and operation of the Licensed Arena. There shall be a Pre-Season Report and Post-Season Report prepared in advance of these meetings by the Licensee.
- 8.2. The Licensee shall address any facility issues that need attention from the Licensor in its reports.

- 8.3. The Parties shall inform each other of any tournaments or special events that are proposed or planned in the Arena.

## 9. GOOD REPAIR, SAFETY AND ENVIRONMENTAL MEASURES – RESPONSIBILITIES OF THE LICENSEE

- 9.1. Without limiting or restricting in any way any other responsibilities and obligations of the Licensee in this Agreement, the Licensee shall, at its sole cost:
- a) ensure that the Arena and all equipment are secured and safeguarded when they are finished using them;
  - b) be responsible for the maintenance, upkeep and related costs related to the Priority Use Areas;
  - c) be responsible for the security of any specialty equipment;
  - d) allow the preparation, service and/or sale of food in or at the Arena in strict compliance with all applicable health and safety requirements, laws and regulations;
  - e) ensure, at its own cost and expense, that the Priority Use Areas are maintained in a condition of good repair. The Town shall be responsible for the structural repair of only the roof and exterior walls of the Arena and Priority Use Areas;
  - f) at all times keep the Priority Use Areas and the Arena reasonably clean and free from debris, discarded or unnecessary materials, equipment or supplies, empty containers and all other unsightly or potentially dangerous rubbish;
  - g) be responsible for staffing and executing all game day operations (e.g. ticket taking, security);
  - h) not do or permit any waste or damage, disfiguration or injury to the Arena or any of the equipment, chattels, fixtures, buildings, structures, erections or improvements of the Licensor;
  - i) ensure that all materials, equipment and supplies delivered to the Arena are neatly and safely stored or contained upon delivery and shall be so maintained until used up;
  - j) take reasonable and required measures, including those required by authorities having jurisdiction, to protect public and those employed on the Arena from bodily harm and to protect adjacent public and private property and Licensor's property from damage;
  - k) neither permit nor allow the introduction or use of beer or other alcoholic beverages or liquors upon the Arena without the written consent of the Licensor, a Special Occasion Permit, and on such conditions as the Licensor may impose including the *Liquor Licence Act* (Ontario), as amended, the *Alcohol and Gaming Regulation and Public Protection Act*, 1996 (Ontario) and the regulations thereto;
  - l) not use or permit to be used any part of the Arena for any dangerous, noxious or offensive business and not to cause or permit any nuisance in, at or on the Arena;
  - m) ensure that any and all contractors performing or engaged to perform any capital work or repairs to the Arena are approved in writing by the Town in advance of commencing any such work or repairs and provide insurance naming the Town as an additional insured party, that the contractors are qualified and authorized to do the intended works or repairs, and that all safety precautions, permits, laws and regulations are fully complied with at all times. The Licensor will respond to the Licensee's requests for approvals within Fourteen (14) days from the time the request was made.
  - n) not do anything or permit anything to be done on the Arena which may constitute a nuisance, cause damage or loss or endanger the Arena, adjoining properties or any person.
- 9.2. The Licensor shall have the right, but not the obligation, to enter upon the Arena at any time to conduct and perform maintenance and repairs of the Arena to the standard of other hockey rinks of the Town, which standards may be amended by the Licensor from time to time, in its sole discretion.
- 9.3. The Licensor shall be responsible for any required capital improvements to the Arena according to Town of Pelham budget approvals.
- 9.4. The Licensor shall be responsible for rectifying and repairing any structural defects of the Arena.
- 9.5. The Licensee shall submit a list of any capital repairs requested to the Arena or greater arena facility by July 1<sup>st</sup> of every calendar year. The Licensor shall consider such requests when preparing its annual capital budget submission to Town Council.

- 9.6. The Licensors shall be responsible for ongoing facility maintenance in the arena facility to the standard of other hockey rinks of in the Regional Municipality of Niagara.

## **10. OBSERVANCE OF LAWS, STATUTES AND REGULATIONS**

- 10.1. The Licensee shall comply at its own expense with, and conform to, all applicable statutes, laws, by-laws, regulations, ordinances, notices, rulings and orders of the federal, provincial or municipal government from time to time in effect during the Term of this Agreement and any renewal thereof. Without limiting the foregoing, the Licensee, at its own expense, shall obtain all necessary municipal, provincial, federal or other governmental approvals, permits and licenses to conduct its business, operations and/or activities in or upon the Arena prior to entering the subject Arena.
- 10.2. The Licensee shall further comply at its own expense with the rules and regulations established by the Licensors for the Arena from time to time.

## **11. ALTERATIONS AND ADDITIONS**

- 11.1. The Licensee agrees that it shall not make any alterations whatsoever to the Arena without the prior written approval of the Licensors. The Licensee shall implement, at its sole cost and expense, all precautions, measures and safeguards as is necessary to protect the public from injury during any approved alterations of the Arena.
- 11.2. All permitted installations, alterations, additions, partitions and fixtures (excluding the Licensee's trade fixtures, namely office furniture, office equipment, locker stalls and electronics which are not affixed to the Arena) in or upon the Arena or Priority Use Areas are, immediately upon placement, the Licensors' property without any compensation therefore to the Licensee and shall not be removed from the Arena by the Licensee at any time either during or after the Term, without the Town's prior written approval.
- 11.3. The Licensors are under no obligation to repair or maintain the Licensee's installations, alterations, additions, partitions and fixtures or anything in the nature of an occupant's improvement made or installed by the Licensee.
- 11.4. The Licensors, acting reasonably, has the right at any time to require the Licensee to remove its installations, alterations, additions, partitions and fixtures or anything in the nature of an occupant's improvement made or Installed by the Licensee, and the Licensee shall be required to make good all damage caused by the installation or removal.
- 11.5. The Licensee shall not paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction on any part of the outside or interior of the Arena or Priority Use Areas without the prior written consent of the Licensors.
- 11.6. The Licensee covenants to pay all charges incurred by or on behalf of the Licensee for any services, work or materials which may be supplied, done or performed in respect of the Arena and the Licensee shall forthwith discharge any liens arising therefrom at any time claimed or registered against or in respect of the Lands, the Arena or any part thereof.

## **12. NOTICE OF ACCIDENT, INJURY OR HARM**

- 12.1. The Licensee shall give immediate written notice with complete details thereof, to the Licensors of any accident, injury or harm to any person on or using the Arena or of any damage, loss or defect in or to any part of the Arena or any damage or loss of any property of any person using the Arena or any damage or loss of any property of the Licensors in the Arena which comes to the attention of the Licensee, its officers, employees, members, servants or contractors, notwithstanding that the Licensors may not have any obligation with respect to same.

## **13. INSURANCE AND INDEMNIFICATION**

- 13.1. For the purposes of this Section, "Licensors" means the Town of Pelham, as well as any and all of its elected officials, representatives, officers, employees, servants, consultants, agents and contractors (other than the Licensee) and "Licensee" means the Licensee as well as any officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign and invitee of the Licensee or of any person permitted or allowed by the Licensee to enter upon or use the Arena.
- 13.2. The Licensee agrees to obtain and maintain in force throughout the duration of this Agreement, including any permitted possession after the Term, at its sole cost and expense including the payment of all deductibles, the following policies of insurance for the specified



limits, or such other policies of insurance or higher limits as the Licensor acting reasonably and prudently may from time to time require:

- a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage or loss, including acts or omissions of the Licensee, its employees, contractors, sub-contractors, agents and invitees and in a form and with an insurance company acceptable to the Licensor. Such policies of insurance shall have a limit of coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence or such higher limits as the Licensor, acting reasonably and prudently, may from time to time require. Such policies of insurance shall include, but not be limited to the following: blanket contractual liability; land and Arena liability; occupier's liability, completed operations liability; tenant's legal liability, products liability; owners and contractors liability; non-owned automobile liability; cross-liability and severability of interest provisions;
- b) "All Risks" insurance on property of every description and kind owned by the Licensee, or for which the Licensee is legally liable, or which is installed by or on behalf of the Licensee within the Arena including, without limitation, equipment, trade fixtures and improvements, in an amount not less than the full replacement cost thereof from time to time;
- c) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario including third party liability insurance and at least One Million Dollars (\$1,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Licensee;
- d) It is the responsibility of the Licensee to ensure that its contractors and subcontractors, of every description, obtain and maintain Commercial General Liability insurance with a minimum limit of coverage of Two Million Dollars (\$2,000,000) per occurrence and endorsed to include the Town and name of licensee as additional insured; and,
- e) such other forms of insurance as may be reasonably and prudently required by the Licensor from time to time.

13.3. All such insurance policies and certificates shall name as an additional insured the Licensor and anyone else with an interest in the Arena from time to time designated in writing by the Landlord. Such policies shall also require at least thirty (30) days' written prior notice of any change to or amendment, cancellation, expiration or termination of the coverage under such policies to be given to the Licensor herein and be in a form satisfactory to the Licensor. All insurers shall be licensed to do business in Ontario, and such insurers and the insurance coverages shall be acceptable to the Licensor acting reasonably and prudently. The Licensee shall deliver to the Licensor certificates of insurance originally signed by authorized insurance representatives, or, if required by the Licensor, certified copies of such policies prior to the execution of this Agreement and for all renewals thereafter during the Term of this Agreement no later than sixty (60) days prior to their renewal date and at any other time upon request by the Licensor. In the event that the Licensee fails to do so, then this Licence may be immediately terminated at the Licensor's option without further notice. All insurance coverages to be provided by the Licensee herein shall be primary and not call into contribution any other insurance coverages available to the Licensor and such coverage shall preclude subrogation claims against the Licensor and any other person insured under the policy. Insurance requirements and coverage herein shall not limit, reduce, or waive any of the Licensee's obligations to indemnify the Licensor pursuant to this Agreement herein or the liabilities assumed by the Licensee under this Agreement. The Licensee shall not do or omit to do anything that may breach, limit, restrict, or prejudice the terms or conditions of the insurance coverages referred to herein.

13.4. The Licensee shall defend and indemnify the Licensor and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses (including, without limitation, legal fees) in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence in or about the Arena; (b) occasioned or caused wholly or in part by any act or omission of the Licensee or anyone for whom it is responsible at law; or (c) arising from any breach by the Licensee of any provisions of this Agreement. The foregoing indemnity shall survive the termination of this Agreement notwithstanding any provision of this Agreement to the contrary.

13.5. The Licensee shall use the Arena at its sole risk, and the Licensor shall not be liable for any loss, injury or damage caused to persons using the Arena or to any property, except to the extent that same is attributable or caused by the negligence of the Licensor, its officers, officials, employees and agents, or any of them, the responsibility for insuring against any



such loss, injury or damage being that of the Licensee who hereby waives, on behalf of itself and its insurers, any rights of subrogation against the Licensors. In addition and without limitation, the Licensee agrees that the Licensors, except to the extent that same is attributable or caused by the negligence of the Town, its officers, officials, employees and agents, or any of them, shall not be liable for and hereby releases the Licensors from:

- a) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Arena or from the water, steam or drainage pipes or plumbing works of the Arena or from any other place or quarter;
- b) any and all claims, actions, causes of action, damages, demands for damages and other liabilities for or related to:
  - i. any bodily injury, personal injury, illness or discomfort to or death of the Licensee or any of its employees, contractors, invitees, customers, others for whom it is in law responsible or any other, in or about the Arena; and
  - ii. any loss or damage to all property in or about the Arena owned by the Licensee or others;
- c) any indirect or consequential damages including, but not limited to, loss of profit.

#### 14. BREACH/FAILURE TO PERFORM

14.1. Any of the following occurrences or acts shall constitute an event of default by the Licensee:

- a) the Licensee fails to make any payment of any sums herein required to be paid, regardless of whether demand for payment is made or not;
- b) the Licensee fails to perform any covenant, condition or obligation required to be performed or observed under this Agreement;
- c) the Licensee (i) becomes bankrupt; (ii) has its property seized or attached in satisfaction of a judgment; (iii) has a receiver appointed; (iv) commits any act or neglects to do anything with the result that a construction lien or other encumbrance is registered against the Lands or any part thereof; (v) without the Licensors' written consent, makes or enters into an agreement for a sale of its assets to which the Bulk Sales Act applies; (vi) takes action with a view to winding up, dissolution or liquidation of the Licensee;
- d) any insurance policy is canceled or not renewed by reason of the use or occupation of the Arena or by reason of non-payment of premiums; and
- e) the Arena become vacant or abandoned or are used by any other person or persons for any purpose other than as provided for in this Agreement without the Licensors' written consent.

14.2. When a default on the part of the Licensee has occurred:

- a) all amounts payable in respect of the Licence Fee, together with all other amounts owing by the Licensee to the Licensors, including those payments not yet due if any, shall immediately become due and payable; and
- b) the Licensors shall have the right to terminate this Agreement, or in lieu of termination, the Licensors shall have the right to re-enter the Arena and to retake possession of the Arena and deal with them as it may choose.

14.3. When a default has occurred and the Licensors chooses not to terminate this Agreement, the Licensors shall have the right, but not the obligation, to take any and all necessary steps to rectify any or all acts of default of the Licensee and to charge the costs of such rectification (including without limitation solicitor fees) to the Licensee and to recover the costs from the Licensee, which amount shall be immediately due and payable.

14.4. No acceptance of the Licence Fee subsequent to any breach or default, other than non-payment of Licence Fee, shall be taken to operate as a waiver or condoning of any term, condition or covenant of this Agreement nor in any way to defeat or affect the rights of the Licensors hereunder. The Licensors' rights under this Agreement shall not in any manner be prejudiced even if the Licensors has overlooked or condoned any non-compliance, breach or default with the terms, covenants and conditions of this Agreement by the Licensee nor shall the Licensors' rights in any way be limited or restricted by any other right or privilege that the Licensors may have under this Agreement or provided by law. Upon default by the Licensee under any term, covenant or condition of this Agreement, and at any time after the default, the Licensors shall have all rights and remedies provided by law and by this Agreement. No delay or

omission by the Licensor in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy, Furthermore, the Licensor may remedy any default by the Licensee in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Licensee, The failure of the Licensor to insist upon strict performance of any of the covenants, terms or conditions of this Agreement, In any one or more Instances, shall not be construed as a waiver of its right to insist on compliance with same or any other covenant, term or condition at any time. All rights and remedies of the Licensor granted or recognized in this Agreement or by law are cumulative and may be exercised at any time from time to time independently or in combination, No covenant, term or condition of this Agreement shall be deemed to have been waived by the Licensor unless the waiver is in writing and signed by the Licensor.

## **15. REMOVAL OF LICENSEE'S PROPERTY**

- 16.1. Upon the expiration of the Term or earlier termination of this Agreement, the Licensee shall immediately cease activities and operations at the Arena and make whatever arrangements are necessary to leave the Arena in a clean, tidy and safe condition free from any hazards. In addition, the Licensee shall remove, at the Licensee's own expense, all equipment, chattels, fixtures, buildings, structures, erections or improvements placed or made by the Licensee on the Arena or supplies and materials deposited on the Arena by the Licensee, and replace any top soil or trees removed and shall restore the Arena to the satisfaction of the Licensor, and upon failure to do so within ten (10) days of, expiration or earlier termination as aforesaid, the Licensor may remove all or any of the said equipment, chattels, fixtures, buildings, structures, erections or improvements of the Licensee or supplies and materials so deposited by it and restore the Arena to their former condition and shall be entitled to recover all costs and expenses arising from and related to same from the Licensee and in no event shall the Licensor be required to pay compensation to the Licensee in respect of any such equipment, chattels, fixtures, buildings, structures, erections or Improvements or supplies or materials or return same to the Licensee. Notwithstanding anything contained herein to the contrary, the Licensee shall not be entitled to remove any equipment, chattels, furnishings, fixtures, buildings, structures, erections or improvements or supplies or materials donated or supplied to the Arena by the Licensor.

## **16. EXTENSION OF LICENCE TERM**

- 17.1. The Licensee may apply in writing to the Licensor sixty (60) days prior to the end of the Term for a renewal of this Licence upon such terms and conditions as are satisfactory to the Licensor, including Licence Fee, but nothing herein contained shall obligate the Licensor to renew this Agreement or the Licence created thereby.

## **17. POSSESSION AFTER TERM**

- 17.1. If the Licensee remains in possession of the Arena with the consent of the Licensor after the expiration of the Term hereby granted or earlier termination of the Agreement and without the execution and delivery of a new agreement, there will be no tacit renewal of this Agreement or renewal or extension of the Term, nor shall a licence from year to year be created but, notwithstanding any statutory provisions to the contrary, the Licensee shall be deemed a monthly Licensee at a licence fee payable monthly in advance in the same amount as the Licence Fee payable in the last month of the Term and otherwise upon and subject to the same terms and conditions herein contained, excepting provisions for renewal.

## **18. NO ASSIGNMENT, TRANSFER OR ENCUMBRANCE**

- 18.1. The Licensee shall not assign or transfer this Agreement or any part thereof, or encumber its rights hereunder, nor shall it sublet or part with or share possession of the whole or any part of the Arena. Any attempt to assign, transfer or encumber any of the rights, duties or obligations in this Agreement or sublet the Arena is void.

## **19. NOTICE**

- 19.1. Notice - All notices, or any other thing to be given or delivered pursuant to this Agreement, unless otherwise specified, shall be given in writing and delivered personally, transmitted by facsimile or by prepaid registered mail, and addressed

to the Licenser at: Town of Pelham, 20 Pelham Town Square, Fonthill ON L0S 1E0  
Attention: Nancy Bozzato, Town Clerk

To Licensee at:

or such other address as the Licenser or Licensee may, from time to time, advise each other by notice in writing. All notices delivered by facsimile shall be deemed received upon mechanical confirmation of transmittal. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal interruption, all notices shall be delivered personally or by facsimile.

## 20. MISCELLANEOUS

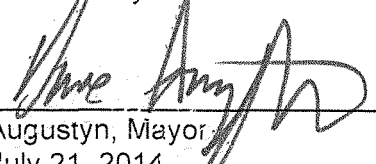
- 20.1. This Agreement and all terms, covenants, conditions, provisions and licence fees herein reserved shall be binding upon and shall enure to the benefit of the Licenser and Licensee and their respective heirs, executors, administrators, successors and permitted assigns.
- 20.2. The Licenser shall have the right to satisfy any amount from time to time owing by it to the Licensee by way of a set-off against any amount from time to time owing by the Licensee to the Licenser, including but not limited to any amount owing to the Licenser pursuant to the Licensee's Indemnification of the Licenser in this Agreement.
- 20.3. To the extent that the Licenser is unable to fulfil, is delayed or is restricted in fulfilling any of its obligations contained in this agreement by reason of any act of God, act of terror, any labour strike or disruption, or by reason of any statute, law or order-in-council, or any regulation, by-law or order passed thereunder or made pursuant thereto, including a by-law of the municipal Council of the Town, or the order or direction of any government department, official or other authority, including the Licenser acting in its capacity Town as a municipal authority, or of any administrator, controller or board; not being able to obtain any permission or authority required by or under any statute, law or order-in-council, or any regulation, by-law or order; or any other cause beyond its control, whether of the foregoing character or not, the Licenser shall, in its sole discretion, be entitled to terminate this Agreement, extend the time to fulfil its obligation or amend the obligation thereby restricted to conform with such restriction and the Licensee or any other person affected is not entitled to any compensation whatsoever whether for any inconvenience, nuisance, discomfort, damages, loss or otherwise thereby occasioned.
- 20.4. Entire Agreement - This Agreement contains the entire agreement between the parties hereto with respect to the subject matters hereof. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it. No amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and executed by the parties hereto.
- 20.5. A reference to any act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any act, by-law, rule or regulation or provision enacted in substitution therefor or amendment thereof.
- 20.6. The headings to each section are inserted for convenience of reference only and do not form part of the Agreement.
- 20.7. Applicable Law - This Agreement shall be governed by, and construed under, the laws of the Province of Ontario.
- 20.8. Except as may be otherwise expressly provided herein, all fees, amounts or monies payable under this Agreement are expressed in Canadian dollars and are exclusive of goods and services tax. All fees, amounts or monies owing hereunder by the Licensee shall be payable without deduction, abatement or setoff and shall be paid by certified cheque to the "Town of Pelham". Any overdue amounts payable by the Licensee shall bear interest at the rate of twelve percent (12%) per annum, calculated monthly, from the date upon which the payment was due.


- 20.9. Time is of the essence for this Agreement and for every part hereof.
- 20.10. This Agreement shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.
- 20.11. Any schedules attached to or referred to in this Agreement shall form an integral part of this Agreement.
- 20.12. Without restricting or limiting the rights and privileges of the Licensor to any broader interpretation, any "breach" or "default" of or in respect of a term, covenant, warranty, condition or provision of this Agreement caused by an officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign, invitee, licensee of the Licensee or of any person permitted or allowed by the Licensee to enter upon or use the Arena shall constitute a breach by the Licensee.
- 20.13. If any provision or provisions of this Agreement or parts thereof or the application thereof to any person or circumstances shall be found by any court to any extent to be invalid or unenforceable or to be void or illegal, such provision or provisions or parts thereof shall be deemed severable and all other provision or provisions or parts of this Agreement shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found void and/or illegal, The remainder of this Agreement and its application to any person or circumstances shall not be affect thereby; and the parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 20.14. If two or more Individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) sign this Agreement as the Licensee, the liability of each such Individual, corporation, partnership or other business association to pay the Licence Fee and to make and perform all other payments and obligations hereunder shall be deemed to be joint and several. In like manner, if the Licensee is a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several. The Licensee warrants and represents that it is duly formed and in good standing, and has full corporate or partnership authority, as the case may be, to enter into this Agreement, and has taken all corporate or partnership action, as the case may be, necessary to make this Agreement a valid and binding obligation, enforceable In accordance with its terms.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement by its officers duly authorized in that behalf and caused to be affixed its corporate seal.

**TOWN OF PELHAM**

*We have authority to bind the Town/Licensor.*

  
\_\_\_\_\_  
Dave Augustyn, Mayor  
Date: July 21, 2014

  
\_\_\_\_\_  
Jordan Mammoliti, Deputy Clerk  
Date: July 21, 2014

**PELHAM PIRATES JUNIOR HOCKEY CLUB INC.**

*I have authority to bind the Licensee Corporation.*

  
\_\_\_\_\_  
Name: Timothy Toffolo, President  
Date: July 21, 2014