

**LICENCE AGREEMENT**

**THIS AGREEMENT** made as of the 6 day of March, 2017

**BETWEEN:**

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

~ and ~

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

**WHEREAS** the Town is the owner of the lands known as the Pelham Community Centre located at 55 Wellspring Way, Fonthill, Ontario (the "Lands");

**AND WHEREAS** the Licensee is desirous of obtaining a license to occupy and operate out of The Facility;

**AND WHEREAS** in accordance with Council Report No.20160419011 adopted by Council for the Town on the 25<sup>th</sup> day of April, 2016, the Licensee has agreed to grant a license to the Licensor to use and occupy the designated portions of the Community Centre 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 holiday, or statutory vacation day that is observed by the Town of Pelham;
- 1.3 "Town" means the Corporation of the Town of Pelham as represented by Council;
- 1.4 "Community Centre" means the Pelham Community Centre located at 55 Wellspring Way, Fonthill, Ontario;
- 1.5 "Council" means the Council of the Corporation of the Town of Pelham;

- 1.6 "Concessions" means food and beverages prepared and sold at the Concessions Stand. Concessions shall also include merchandise with the Pelham Panthers Junior Hockey Team logo, sold from the Concessions Stand;
- 1.7 "Concessions Stand" means the room designated in the Community Centre for the sale of Concessions;
- 1.8 "The Facility" means the Accipiter Arena or the Duliban Insurance Arena as designated for use of the Licensee by the Facility Manager, together with the appurtenant dressing rooms and includes the Jr. B Zone;
- 1.9 "Facility Manager" means the person so designated by the Town;
- 1.10 "Jr. B Zone" means the area within the Accipiter Arena designated for use of the Licensee as shown on Schedule "A" attached;
- 1.11 "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 Community Centre;
- 1.12 "Permitted Uses" means those uses more particularly described in clause 2;
- 1.13 "Prime Time ice hours" means Monday – Friday 4pm-11pm and Saturday & Sunday 7am –11pm;
- 1.14 "Security Guard" means a person who holds a valid security guard licence and who is employed by or operates a security business in compliance with the provisions of the *Private Security and Investigative Services Act, 2005* as amended from time to time;
- 1.15 "Youth Prime Time hours" means Monday – Friday, 4:00pm – 10:00pm, Saturday – Sunday, 7:00am-10:00pm.
- 1.16 "Junior B Hockey Team" means the hockey team operated by the Licensee known as the Pelham Junior Hockey Club.

## **2. GRANT OF LICENSE**

### **Facility Usage**

- 2.1 The Licenser hereby grants to the Licensee the license (the "license") to use The Facility solely and actively for the purpose of hockey games, tournaments, clinics, practices, dryland training, fundraising events and for no other purpose whatsoever for a term of 5 years, commencing September 1, 2018 and terminating on August 31, 2023.
- 2.2 The license may be renewed or extended, subject to Town approval and may not be subject to the same terms contained in this Agreement.
- 2.3 The Licenser will provide the Licensee with a designated Jr. B Zone for its use within the Community Centre, which shall be designated by the Facility Manager.
- 2.4 The Licenser and Licensee acknowledge that the Licensee shall bear responsibility for all improvements, including related expenses that are made to the Jr. B Zone. All such improvements will only proceed following written approval of the Facility Manager.

- 2.5 Licensee shall bear the responsibility for maintaining and cleaning the Jr. B Zone area and keeping them to a standard set by the Facility manager. Inspections will occur no less than once per month, with 24 hours' notice.
- 2.6 Upon reasonable notice of no less than 48 hours, the Licensor will be permitted use of the Jr. B Zone space granted to the Licensee if necessary.
- 2.7 The Licensee will be responsible to supply the admission tickets and to hire and pay for the ticket sellers, ticket takers. The Licensee shall sell only numbered tickets and in no instance shall the number of tickets sold for any game at The Facility exceed the maximum capacity of The Facility.
- 2.8 In the event that the Licensee holds a hockey game with an attendance of 500 or more, the paid gate admission will be split between the Town and the Licensee. The Town will receive 40% of the total paid gate, with the Licensee retaining the remaining 60%.
- 2.9 On game days, the Licensee will supply and pay for one Security Guard for every 400 people in attendance. In addition, the Licensee will supply and pay for additional Security Guards where the Facility Manager determines in his/her sole discretion acting reasonably that additional Security Guards are required for the safety of the persons attending the game at The Facility.
- 2.10 All sales of alcohol during games by the Licensor will be in accordance with the Town of Pelham Operating Policy.
- 2.11 The Walking Track at the Community Centre will not be available free of charge one hour prior to and during the Licensee's game nights. Those wishing to access the Walking Track on game nights may pay the game admission fee in order to do so.
- 2.12 The Licensee acknowledges and agrees that its right to use The Facility is non-exclusive, and that The Facility shall be available for use by the public and the Licensor when there are no games or practices scheduled by the Licensee.
- 2.13 The Licensor acknowledges and covenants that, for the duration of this License Agreement, no other such agreements will be made with other Jr. Hockey teams, provided that the above conditions are met and the agreement is in good standing.

**Grant of License: Concession & Vending Machines**

- 2.14 The Licensor and the Licensee agree that the Licensee shall have sole operation of the concession stand on the main floor of the Community Centre and all vending machines. The required hours of operation of concession stand shall be set annually by the Facility Manager in consultation with the Licensee.
- 2.15 The Licensee shall be responsible for hiring and paying all staff required to operate the concession stand and to supply the vending machines.

- 2.16 The types of vending machines installed must be approved by The Facility Manager.
- 2.17 The Town of Pelham will supply all appliances in the Concession stand.
- 2.18 The Licensee will be responsible for regular maintenance of the appliances in the Concession stand, at their own expense. The maintenance schedule will be set by the Facility Manager and the maintenance shall be performed by professionals approved by the Facility Manager.
- 2.19 The Licensee will have no concession rights elsewhere in the building and will have no rights on any events or rentals that occur in The Facility.

### **3. FEES PAYABLE BY LICENSEE**

- 3.1 The Licensee shall pay to the Licensor a nominal license fee (the "License Fee"), without deduction, abatement, or set-off, of \$1.00 (One dollar) per annum.
- 3.2 In addition to the License 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 will be set annually by the Town and are subject to change.
- 3.3 The Licensee is committed to renting nine prime time ice hours per week, between September 1<sup>st</sup> and March 31<sup>st</sup>, the specific dates and times to be set out in the annual contract with the Town.
- 3.4 The Licensee will pay the 'Adult Rate' for game ice rentals. Rates will be set annually by the Licensor. For the 2018/2019 season, the adult rate has been set at \$198.77/hour.
- 3.5 The rental rate for practice ice for the Licensee will be paid at the Youth rates. Rates will be set annually by the Licensor. For the 2018/2019 season, the youth rate has been set at \$141.70.
- 3.6 The Licensee will be entitled to summer ice rentals for three weeks during the month of August. Licensee will be entitled to fifteen hours per week. Rates will be set annually by the Licensor.
- 3.7 The Licensee shall sign a contract with the Town annually prior to the commencement of the Junior B Hockey Team season which will specify the dates and times of the ice times to which the Licensee is committed and shall set out the Town's policies for use of The Facility which the Licensee is required to adhere.
- 3.8 The annual fee payable by the Licensee to the Licensor for the grant of this concession stand license shall be set by the Licensor prior to the commencement of the Jr. B Hockey season in each year of the license. The annual fee for the first year of the license shall be \$2,000.00.

### **4. EVENTS**

- 4.1 The dates, locations, and times of any special events which the Licensee wishes to hold at The Facility that are not otherwise authorized by this License shall be subject to the approval of The Facility Manager.

**5. ENTRY BY THE LICENSOR**

- 5.1 This agreement is subject to the right of the Licensor to enter onto the property at any time for inspections. 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 Facility from time to time for the purpose of making repairs, alterations, or improvements to The Facility 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 Facility 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.
- 5.2 Notwithstanding anything herein contained, the Licensor shall have unrestricted access to The Facility 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 a period of time as it deems necessary in its sole discretion or terminate the License 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 Facility 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, indemnities 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.

**6. RESPONSIBILITIES OF THE LICENSEE**

- 6.1 Without limiting or restricting in any way other responsibilities and obligations of the Licensee in this Agreement, the Licensee shall, at its sole cost:
- a) Ensure that The Facility and all equipment used by the Licensee is secured and safeguarded when they are finished using them;
  - b) 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 Facility or priority use areas without the prior written consent of The Facility Manager.
  - c) Allow the preparation, service, and/or sale of food in or at The Facility in strict compliance with all applicable health and safety requirements, laws, and regulations;

- d) Be responsible for staffing and executing all game day operations (e.g. ticket taking and security, bearing in mind the Licensor's commitment to providing staffing as outlined in sections 2.7 and 2.9 of this agreement);
- e) Ensure that all materials, equipment, and supplies delivered to The Facility are neatly and safely stored or contained upon delivery and shall be so maintained until used up;
- f) Take reasonable and required measures, including those required by authorities having jurisdiction, to protect the public and those employed in facility from bodily harm and to protect adjacent public and private property and Licensor's property from damage;
- g) Not use or permit to be used any part of The Facility for any dangerous noxious or offensive business and not to cause or permit any nuisance in, at, or on The Facility;
- h) Ensure that any and all contractors performing or engaged to perform any capital work or repairs to The Facility 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;
- i) Not do anything or permit anything to be done on The Facility which may constitute a nuisance, cause damage or loss, or endanger The Facility, adjoining properties or any person.

## **7. ALTERATIONS AND ADDITIONS**

- 7.1 The Licensor is 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.
- 7.2 The Licensor, 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.
- 7.3 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 Facility and the Licensee shall forthwith discharge any liens arising therefrom at any time claimed or registered against or in respect of the Lands, The Facility, or any part thereof.

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

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

**9. INSURANCE AND INDEMNIFICATION**

- 9.1 The Licensee agrees to obtain and maintain in force throughout the duration of this agreement, general liability and property damage insurance in the amount of \$5,000,000.00 per occurrence, which policy shall name the Licensee as an additional insured and which policy shall be satisfactory to the Licensee, acting reasonably.
- 9.2 The Licensee shall deliver to the Licensor certificates of insurance prior to the commencement of each Junior B Hockey Team season, and in the event that the Licensee fails to do so, then this License may be immediately terminated at the Licensor's option without further notice.
- 9.3 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 Facility; 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.
- 9.4 The Licensee shall use The Facility at its sole risk, and the Licensor shall not be liable for any loss, injury, or damage caused to persons using The Facility or to an 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 Licensor. In addition and without limitation, the Licensee agrees that the Licensor, except to the extent that 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 Licensor 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 Facility or from the water, steam, or drainage pipes or plumbing works of The Facility 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:
    - a. 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 Facility; and
    - b. Any loss or damage to all property in or about The Facility owned by the Licensee or others;

- c) Any indirect or consequential damages including, but no limited to, loss of profit.

## **10. BREACH/FAILURE TO PERFORM**

10.1 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 cancelled or not renewed by reason of the use or occupation of The Facility or by reason of non-payment of premiums; and
- e) The Facility becomes 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.

10.2 When a default on the part of the Licensee has occurred:

- a) All amounts payable in respect of the License 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 Facility and to retake possession of The Facility and deal with them as it may choose.

10.3 When a default has occurred and the Licensors choose 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.

10.4 No acceptance of the License Fee subsequent to any breach or default, other than non-payment of License 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 have overlooked or condoned any non-compliance, breach, or default with the terms, covenants, and conditions of 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 Licenser in exercising any right or remedy shall operate as a waiver of them or 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 Licenser 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 Licenser to insist upon strict performance of any of the covenants, 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 Licenser 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 Licenser unless the waiver is in writing and signed by the Licenser.

**11. REMOVAL OF LICENSEE'S PROPERTY**

- 11.1 Upon the expiration of the Term or earlier termination of this Agreement, the Licensee shall immediately cease activities and operations at The Facility and make whatever arrangements are necessary to leave The Facility 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 or improvements placed or made by the Licensee on The Facility or supplies and materials deposited on The Facility by the Licensee, and shall restore The Facility to the satisfaction of the Licenser, and upon failure to do so within ten (10) days of expiration or earlier termination as aforesaid, the Licenser may remove all or any of the said equipment, chattels, fixtures or improvements of the Licensee or supplies and materials so deposited by it and restore The Facility 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 Licenser be required to pay compensation to the Licensee in respect of any such equipment, chattels, fixtures or improvements or supplies or materials or return same to Licensee. Notwithstanding anything contained herein to the contrary, the Licensee shall not be entitled to remove any equipment, chattels, furnishings, fixtures or improvements, or supplies or materials donated or supplied to The Facility by the Licenser.

**12. NO ASSIGNMENT, TRANSFER OR ENCUMBERANCE**

- 12.1 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 Facility. Any attempt to assign, transfer, or encumber any of the rights, duties, or obligations in this agreement or sublet The Facility is void.

**13. NOTICE**

- 13.1 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:          34 John Street, St Catharines ON L2N 4P1

Attention: Timothy Toffolo, President

Or such other address as the Licensor or Licensee may, from time to time, advise each other by notice in writing. All notices delivered by facsimile 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.

**14. MISCELLANEOUS**

14.1 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.

14.2 Time is of the essence for this agreement and for every part hereof.

14.3 This agreement shall be governed by, and construed under, the laws of the Province of Ontario;

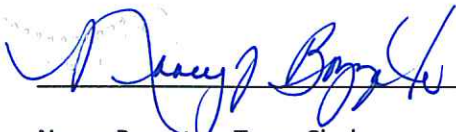
14.4 Any schedules attached to or referred to in this agreement shall form an integral part of this agreement.

**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.

**The Corporation of the Town of Pelham**



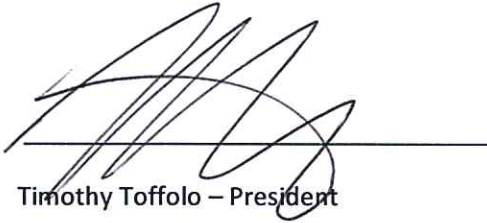
Dave Augustyn – Mayor



Nancy Bozzato – Town Clerk

We have authority to bind the Corporation

**PELHAM PANTHERS JUNIOR HOCKEY CLUB INC.**

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Timothy Toffolo – President

I have the authority to bind the Corporation