

THIS AGREEMENT made on the ____ day of _____, 2023 ("the Agreement").

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

("the Town")

- and -

PELHAM JUNIOR HOCKEY CLUB

("the Licensee")

WHEREAS the Town owns the Meridian Community Centre located at 100 Meridian Way in the Town of Pelham ("the Facility"); and

WHEREAS the Licensee is a not-for-profit corporation incorporated pursuant to the laws of Ontario that desires to operate a concession premises and vending machines at the Facility and to obtain a licence from the Town for that purpose; and

WHEREAS the Town has agreed to grant a licence to the Licensee on the terms and conditions set out in this Agreement; and

WHEREAS the Licensee has properly authorized entering into this Agreement; and

WHEREAS By-law No. [XX-2023] was passed by the Council of the Town on [DATE], authorizing the Town to enter into this Agreement;

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Town and the Licensee (each "a party" and collectively "the parties") agree as follows:

1. TERM

- 1.1. The Term of this Agreement shall be from September 1, 2023 to August 31, 2026 unless terminated earlier in accordance with the provisions herein.
- 1.2. This Agreement may be renewed or extended, on the same or different terms as contained herein, and subject to the following conditions:

- a. not less than six (6) months and not more than twelve (12) months prior to the end of the Term, the Licensee shall provide written notice to the Town of its desire to renew or extend this Agreement;
- b. the terms and conditions of the renewal or extension of this Agreement shall be mutually agreeable to the Town and the Licensee; and
- c. the renewal or extension of this Agreement shall be approved by Council of the Town.

2. GRANT OF LICENCE

- 2.1. The Town hereby grants to the Licensee a licence to enter and use the Facility during the Term for the purposes of concession and vending machine operations as set out in this Agreement and in accordance with all terms and conditions contained herein.
- 2.2. Nothing in this Agreement shall be deemed, construed or interpreted to grant any easement, title, right or interest in the Facility to the Licensee or to create any partnership, agency or joint venture relationship between the parties.

3. CONCESSION AND VENDING MACHINES

- 3.1. Subject to subsections 3.2 and 3.4, during the Term the Licensee shall have an exclusive licence to operate the concession premises on the lower level of the Facility, which consists of one (1) kitchen/food preparation area and one (1) seating area ("the Concession").
- 3.2. Notwithstanding subsection 3.1, the Town shall have the right to enter the Concession for any purpose whatsoever without prior notice to the Licensee. The Licensee shall not be entitled to any compensation for any inconvenience, nuisance or discomfort occasioned thereby.
- 3.3. Without limiting the generality of subsection 3.2, the Town shall supply all appliances in the Concession and shall inspect them on a monthly basis. The Town shall undertake any necessary maintenance or repairs of the appliances in the Concession at the expense of the Licensee.
- 3.4. The Licensee shall be responsible for routine cleaning of the Concession and shall keep it in a clean and sanitary condition to the satisfaction of the Town and in accordance with public health standards.
- 3.5. The Licensee shall provide minimum hours of operation for the Concession in accordance with subsections 3.6 to 3.8, during which times the Concession shall be open and operational.
- 3.6. From the first (1st) day of January to the thirty-first (31st) day of December in each year of the Term, the Concession shall be open and operational from 4:00 p.m. to 9:00 p.m. from Monday to Friday.

- 3.7. From the fifteenth (15th) day of August to the thirty-first (31st) day of May in each year of the Term, the Concession shall be open and operational from 7:00 a.m. to 9:00 p.m. on Saturday and Sunday.
- 3.8. From the first (1st) day of June to the fourteenth (14th) day of August in each year of the Term, where one (1) or more weekend events are scheduled at the Facility, the Concession shall be open and operational from 7:00 a.m. to 9:00 p.m. on Saturday and Sunday. The Town shall give the Licensee no less than ten (10) days' notice of a weekend event to which this provision applies.
- 3.9. The Licensee may provide additional hours of operation for the Concession at any time during which the Facility is open.
- 3.10. Subject to subsection 3.11, during the Term the Licensee shall have an exclusive licence to supply and operate all vending machines at the Facility.
- 3.11. Notwithstanding subsection 3.10, the Town shall have the right to approve the type(s) of vending machines installed at the Facility and shall further have the right to approve the item(s) stocked in the vending machines.
- 3.12. The Licensee shall have the following responsibilities in relation to operating the Concession and vending machines:
 - a. to provide sufficient staff to maintain the minimum hours of operation of the Concession required by subsections 3.5, 3.6, 3.7 and 3.8;
 - b. to provide sufficient staff to ensure that vending machines are consistently and adequately stocked; and
 - c. to conduct all Concession and vending machine operations in accordance with all applicable public health and fire safety requirements.
- 3.13. Notwithstanding any other provision of this Agreement, the Licensee shall have no licence, right or entitlement whatsoever to supply food or beverage services for events at the Facility other than events of the Licensee as set out herein.

4. FEES PAYABLE BY LICENSEE

- 4.1. The Licensee shall pay an annual licence fee in the amount of three thousand dollars (\$3,000) for the licences granted under section 3 of this Agreement.
- 4.2. All annual licence fees are payable in advance and in full on or before the first (1st) day of September in each year of the Term.

5. INSURANCE AND INDEMNITY

- 5.1. During the Term, the Licensee shall obtain and maintain in full force and effect one or more policies of commercial general liability insurance with aggregate limits of not less than five million dollars (\$5,000,000) per occurrence. The policy or policies shall include coverage for bodily injury, death and property damage and shall contain cross-liability and severability of interest clauses.

- 5.2. The Licensee's policy or policies of commercial general liability insurance shall name the Town as an additional insured with respect to this Agreement and shall contain an undertaking by the insurer(s) to give thirty (30) days written notice to the Town of any material change to the coverages and/or the expiry or cancellation of the said policy or policies.
- 5.3. The Licensee shall provide the Town with proof of insurance on or before the first (1st) day of September in each year of the Term.
- 5.4. Any failure by the Licensee to obtain or provide proof of insurance as required by this Agreement constitutes a default by the Licensee that entitles the Town to terminate this Agreement immediately and without further notice or liability.
- 5.5. The Licensee and the Town shall each indemnify and save harmless the other and its officers, employees, volunteers and agents from and against all losses, claims, actions, demands and liabilities for personal injury or property damage arising as a direct or indirect result of this Agreement, where such claims are caused wholly or in part by the negligence of the Licensee or the Town, as the case may be, or by anyone for whom it is in law responsible.
- 5.6. Notwithstanding subsection 5.5, the Licensee shall use the Facility at its sole risk and the Town shall not be liable for any loss or damage sustained by the Licensee or persons using the Facility pursuant to the licences granted herein, except to the extent that such loss or damage is caused by the negligence of the Town or anyone for whom it is in law responsible.
- 5.7. The Licensee shall give immediate written notice to the Town of any incident, injury or harm to any person using the Facility pursuant to the licences granted herein and shall further give immediate written notice to the Town of any loss, damage or defect at any part of the Facility that comes to the attention of the Licensee.

6. DEFAULT AND TERMINATION

- 6.1. This Agreement is conditional on the Licensee obtaining all necessary permits and approvals to operate at the Facility. A failure by the Licensee to obtain any necessary permits or approvals constitutes a default by the Licensee that entitles the Town to terminate this Agreement immediately and without further notice or liability.
- 6.2. Further, this Agreement is conditional on the Licensee and any person(s) acting on behalf of the Licensee conducting the operations of the Licensee in an appropriate and professional manner that is respectful of the Town and its employees, users of the Facility and members of the public. A failure by the Licensee to maintain an acceptable standard of conduct constitutes a default by the Licensee that entitles the Town to terminate this Agreement immediately and without further notice or liability.

- 6.3. Failure to comply with any of the terms and conditions of this Agreement shall be just cause for its termination. If either of the Licensee or the Town defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall give written notice of the default and shall provide thirty (30) days to remedy it, failing which the non-defaulting party may terminate this Agreement by written notice.
- 6.4. The Town and the Licensee shall have the option to terminate this Agreement at any time upon giving ninety (90) days' written notice to the other party.
- 6.5. This Agreement may be amended or terminated at any time during the Term by mutual agreement of the parties. Any such agreement shall be made in writing, signed by the parties and appended to this Agreement.
- 6.6. Upon termination of this Agreement by expiry or otherwise, the Licensee shall promptly remove any fixtures, equipment, goods or chattels it has installed or placed at the Concession or the Facility and shall repair any damage resulting from such removal to the satisfaction of the Town. The Licensee shall further peaceably surrender to the Town vacant possession of the Concession and all vending machines at the Facility.

7. DISPUTE RESOLUTION

- 7.1. In the event that a dispute arises as to the interpretation, application or execution of this Agreement, including but not limited to a party's rights or responsibilities or an allegation of default, the party that disputes the other party's position or conduct shall immediately provide written notice of the dispute to the other party.
- 7.2. Where a notice of dispute is received in accordance with subsection 7.1, the parties shall attempt to resolve the dispute through negotiation for a period of thirty (30) days from the date on which the notice is delivered. The parties may extend the negotiation period if they agree that a reasonable extension is likely to resolve the dispute.
- 7.3. If a dispute cannot be resolved by the parties through negotiation, it shall be arbitrated in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17. The decision of the arbitrator shall be final and binding on the parties.
- 7.4. The Licensee and the Town shall each bear their own costs associated with the determination of disputes arising under this Agreement, including but not limited to legal and arbitration costs.

8. GENERAL

- 8.1. This Agreement constitutes the entire agreement between the parties relating to matters set out herein. There are no representations, promises, covenants or other terms relating to the subject matter of this Agreement and this Agreement supersedes any prior discussions, understandings or agreements between the parties in relation to its subject matter.

- 8.2. The rights and obligations specified in any provision of this Agreement which by their nature would reasonably be interpreted as intended by the parties to survive the termination of this Agreement shall survive such termination.
- 8.3. The invalidity or unenforceability of any particular term of this Agreement shall not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms of this Agreement.
- 8.4. Waiver by a party of any provision of this Agreement shall not constitute a waiver in any other instance and any such waiver must be made in writing. Any delay or failure on the part of either party to enforce any right, power or remedy conferred by this Agreement shall not constitute a waiver and shall not operate as a bar to that party exercising or enforcing such right, power or remedy at any subsequent time.
- 8.5. This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.
- 8.6. This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and laws of Canada applicable therein.
- 8.7. All communications required under or contemplated by this Agreement shall be considered to have been sufficiently given if delivered by hand, sent by registered mail or sent by email to the party to which such notice is directed as set forth below:

If to the Licensee:

NAME

ADDRESS

EMAIL

Attention: CONTACT NAME

If to the Town:

The Corporation of the Town of Pelham

P.O. Box 400

20 Pelham Town Square

Fonthill ON L0S 1E0

Attention: Jennifer Stirton, Town Solicitor

jstirton@pelham.ca

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed sufficient under the terms of this Agreement.

- 8.8. Notices delivered or sent by registered mail are deemed to be effective on the date of receipt. Notices sent by email are deemed to be effective on the day the email is sent or, if sent after 4:00 p.m., on the following day.

- 8.9. This Agreement may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email or facsimile transmission.

[signature page follows]

DRAFT

IN WITNESS WHEREOF the parties have executed this Agreement by their authorized representatives and agree to be bound thereby as of the first day of the Term.

THE CORPORATION OF THE TOWN OF PELHAM

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation.

Date: _____

PELHAM JUNIOR HOCKEY CLUB

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation.

Date: _____