



**CITY OF HAMILTON**

**COMMUNITY AND EMERGENCY SERVICES DEPARTMENT  
Recreation Division**

<b>TO:</b> Chair and Members Emergency & Community Services Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> June 10, 2013	
<b>SUBJECT/REPORT NO:</b> Licence Agreement for Use of Morgan Firestone Arena by Junior B Franchise (CS13029) (City Wide)	
<b>SUBMITTED BY:</b> Joe-Anne Priel General Manager Community & Emergency Services Department	<b>PREPARED BY:</b> Bryan Ozorio 905-546-2424 ext. 7017 Brad Walker 905-546-2424 ext. 4610
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the City of Hamilton enter into a Licence Agreement with the Stoney Creek Junior Hockey Club Inc. to provide the Junior B franchise with dedicated space in the Morgan Firestone Arena;
- (b) That the Mayor and City Clerk be authorized and directed to execute the Licence Agreement between the City of Hamilton and the Stoney Creek Junior Hockey Club Inc., in a form satisfactory to the City Solicitor; and,
- (c) That the General Manager of Community & Emergency Services, or designate, be authorized to approve any subsequent changes to the Licence Agreement between the City of Hamilton and the Stoney Creek Junior Hockey Club Inc., and to execute any related or ancillary documentation as may be required to give effect thereto, in a form satisfactory to the City Solicitor.

**EXECUTIVE SUMMARY**

On April 10, 2013, a letter from both the owner and General Manger of the Stoney Creek Junior B Warriors to the Councillor of Ward 12 was considered by Council (attached as Appendix A to Report CS13029). The letter requested support from the Ward Councillor to relocate the Warriors Junior B franchise from the Valley Park Arena in Stoney Creek to the Morgan Firestone Arena in Ancaster. Both arenas are City owned and operated. Council referred the matter to the General Manager of Community & Emergency Services for a Report to the Emergency and Community Services Committee.

The Stoney Creek Junior B Warriors are one of eight teams currently playing in the Golden Horseshoe Conference of the Ontario Hockey Association's (OHA) Junior B league. The Warriors are one of four OHA junior hockey teams currently playing in Hamilton municipal arenas. The other teams are the Hamilton Junior A Redwings, Glanbrook Junior C Rangers, and the Dundas Junior C Blues.

The Warriors have been playing out of the Valley Park Arena in Stoney Creek since the mid-1990s. The owner of the Warriors has received permission from the OHA to move the franchise from Valley Park Arena to Morgan Firestone Arena for the 2013-2014 hockey season and beyond. The Warriors favour a move to Morgan Firestone given the population in close proximity to the arena, prospects for drawing larger attendance and the amenities that are available in the arena itself. The owner of the Warriors has indicated that the franchise will change the name of the team when it moves to Morgan Firestone Arena.

A licence agreement has been negotiated between City Recreation staff and the owner of the Warriors franchise (attached as Appendix B to Report CS13029). Council approval of the licence agreement will allow for the move to take place in time for the 2013-2014 hockey season.

The licence agreement will provide the Junior B team with priority use of space in Morgan Firestone Arena required to operate the franchise. This space will include a dressing room, equipment storage/laundry room, and an office. The Junior B franchise will be charged a licence fee of \$1.00 per annum for use of the space. The Junior B franchise will be responsible for covering costs associated with renovations/capital upgrades within the rooms provided (e.g. adding locker stalls, painting). They will also be responsible for staffing and executing all game day operations (e.g. ticket taking, security).

The provision of priority use space is consistent with what is provided to other OHA junior teams playing in municipal arenas in Hamilton and also with what the City provided to the Warriors at Valley Park Arena.

The Junior B franchise will also require approximately nine to eleven hours of ice time per week during their season for games and practices. Recreation staff is working with the Warriors and existing ice users in Morgan Firestone Arena to identify suitable ice times for the Warriors. This will result in some ice users having to give up some of their existing ice allocation. Recreation staff is working to mitigate the impact on existing ice users by either providing ice time in other time slots at Morgan Firestone Arena or by providing comparable ice times in other municipal arenas. Every effort is being made to minimize disruption to existing programming while still accommodating the needs of the Junior B franchise.

The ice rental rates charged to the Warriors franchise will be determined through the application of the Council approved criteria for determining ice rental rates for OHA Junior hockey teams. The criteria provides for a sliding scale of rental rates based on the percentage of Hamilton residents on an OHA junior team's roster.

Rental ice will be provided to the Junior B franchise through the City's regular permit issuance process.

***Alternatives for Consideration – Not Applicable***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** There are no financial implications associated with Report CS13029.

**Staffing:** There are no staffing implications associated with Report CS13029.

**Legal:** There are no legal implications associated with Report CS13029.

**HISTORICAL BACKGROUND**

There are currently four OHA junior hockey teams currently playing in Hamilton municipal arenas; the Hamilton Junior A Redwings, Stoney Creek Junior B Warriors, Glanbrook Junior C Rangers, and the Dundas Junior C Blues. These teams strengthen the sense of community and community identification where they are active. They also offer talented young Hamilton players an opportunity to play and develop at a high level of competition in their own communities. Therefore, there is a perceived value in maintaining these franchises as valuable community assets.

The OHA junior teams currently based in Hamilton are registered as not-for-profit corporations. Each team has modest revenue streams comprised of ticket sales, sponsorships and some advertising revenue. However, these revenues have not typically been enough to cover all the costs of operating the franchises.

The City has traditionally assisted these franchises by offering them discounted ice rental rates and space in their home arenas at no charge (e.g. dressing and equipment rooms).

The City of Hamilton's approach with OHA junior teams is consistent with the approach taken by other Ontario municipalities with junior teams based in their jurisdictions.

Local sport groups that will be impacted by the Junior B team's move to Morgan Firestone Arena are the Ancaster Minor Hockey League (AMHL), the Ancaster Avalanche Girls' Hockey Association (AAGHA) and the Ancaster Figure Skating Club (AFSC). These groups are aware of the impending move of the Warriors to Morgan Firestone Arena. All three groups are supportive of the move although the current ice allocations for all three groups will be impacted to some degree (franchise requires approximately 11 hours of ice a week for games and practices).

The figure skating club has expressed some concern related to having their ice times moved and the impact it may have on their programming. Recreation staff is working to mitigate the impact on existing ice users by either providing ice time in other time slots at Morgan Firestone Arena or by providing comparable ice times in other municipal arenas. Every effort is being made to minimize disruption to existing programming while still accommodating the needs of the Junior B franchise.

The owner and management of the Junior B franchise has committed to partnering with the minor sport associations in Morgan Firestone Arena to identify promotional and fund raising opportunities for them. They have met with all three associations to discuss future partnership opportunities.

#### **POLICY IMPLICATIONS**

There are no policy implications associated with Report CS13029.

#### **RELEVANT CONSULTATION**

Local affiliated minor sport associations that will be impacted by the Junior B team's move to Morgan Firestone Arena have been consulted. The hockey associations (AMHL, AAGHA) have expressed support for the franchise move and recognize the potential synergies that can be created by having an OHA junior team in Morgan Firestone Arena. The AFSC has expressed some concern over the disruption to their program should their current ice allocation be disrupted. These issues are being discussed so that a satisfactory arrangement that will work for all parties concerned can be agreed upon.

Legal Services staff reviewed Report CS13029 and had no comments or concerns.

### **ANALYSIS / RATIONALE FOR RECOMMENDATION**

Approval of the proposed license agreement will allow the City of Hamilton to retain a Junior B hockey franchise within a city owned and operated arena. The Morgan Firestone Arena is ideally suited to the facility needs of a Junior B franchise and has the prerequisite seating capacity (approximate seating capacity = 900) to accommodate typical Junior B game attendance.

The presence of a Junior B franchise will also provide the following benefits to the City of Hamilton and the local community in Ancaster:

- Help to preserve Hamilton based junior hockey franchises as valued assets in the community; and,
- Provide partnership opportunities for local minor sport organizations to promote their programs and fundraise.

### **ALTERNATIVES FOR CONSIDERATION**

None

### **CORPORATE STRATEGIC PLAN**

#### **Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

#### **Strategic Objective**

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

#### **Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

**Strategic Objective**

2.2 Improve the City's approach to engaging and informing citizens and stakeholders.

<b>APPENDICES / SCHEDULES</b>
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Appendix A to Report CS13029: Letter from Owner of Stoney Creek Junior B Warriors to Ward 12 Councillor

Appendix B to Report CS13029: Licence Agreement between City of Hamilton and Stoney Creek Junior Hockey Club Inc.



Stoney Creek Warriors Junior B Hockey Club Inc.  
Head Office: 467 Charlton Avenue East  
Hamilton, Ontario  
L8N 1Z4

April 3, 2013

To: Councillor Lloyd Ferguson  
Ward 12

From: Ron VanKleef, Owner, Stoney Creek Warriors Jr. B Hockey Club  
Ryan Kuwabara, General Manager/Head Coach, Stoney Creek Warriors Jr. B Hockey Club

Dear Councillor Ferguson,

We are very excited to have recently received approval from the Ontario Hockey Association giving us authorization to relocate our franchise from Stoney Creek's Valley Park Arena to Ancaster's Morgan Firestone Arena.

Our organization is focused on creating one of the top junior programs in Ontario by developing our Hamilton area players and helping them reach their potential athletically, academically and within the community.

It has been over 20 years since a junior hockey team has played out of Ancaster and now with the Ontario Hockey Association approval we are thrilled to bring the excitement of junior hockey back.

This revival of junior hockey in Ancaster will lead to new young minor hockey players having the dream of playing junior hockey in Ancaster for the team they grew up watching. We know the Ancaster community will enjoy watching local players develop and move on to playing at the higher levels. We believe Morgan Firestone Arena is a great arena to play and watch a junior hockey game in, as it has ample seating and a great community atmosphere.

We are looking for your support as a council member representing the Ancaster ward within the City of Hamilton to approve the relocation of the team to Morgan Firestone. In addition, assisting us with the coordination of ice times with the local users and with making minor modifications to the facility to meet Junior B requirements would be greatly appreciated.

We have had an initial meeting with Ancaster Minor Hockey Association and they are excited to work with us to have a junior hockey team back in Ancaster. We are already a registered Plan G user with the City of Hamilton Recreation in regards to ice allocation and therefore need to begin working immediately on our ice allocation for next season at Morgan Firestone.

We look forward to hearing from you.

Please don't hesitate to contact us if you have any questions or concerns.

Regards,

Ron VanKleef (905) 802-1001  
Ryan Kuwabara (905) 973-7177

## LICENCE AGREEMENT

**THIS AGREEMENT** made as of the 1<sup>st</sup> day of August 2013

**BETWEEN:**

**CITY OF HAMILTON**

(hereinafter called the "Licensor" or "City")

Of The First Part,

- and -

**Stoney Creek Junior Hockey Club Inc.**

(hereinafter collectively called the "Licensee")

Of The Second Part,

Collectively hereinafter called the "Parties"

**WHEREAS** the City is the owner of the lands known as Morgan Firestone Arena (the "Premises"), more particularly outlined on the survey attached hereto as Schedule "A", located at 385 Jerseyville Road West, Hamilton, ON L9G 3L5 (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 WHEREAS** the Licensee is desirous of obtaining a licence to occupy the Premises;

**AND WHEREAS** in accordance with Item XX, Emergency & Community Services Committee Report No. CS13029, adopted by Council for the City of Hamilton on the XX day of, the Licensee has agreed to grant a license to the Licensor to use and occupy the Licensed Premises 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 City of Hamilton.
- 1.3. "City" means the City of Hamilton as created by the *City of Hamilton Act*, S.O. 2001, c.14, 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 City of Hamilton;
- 1.5. "General Manager" means the City's General Manager of Community and Emergency Services or a person designated by him or her to act on behalf of the General Manager with respect to this Agreement;
- 1.6. "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 Premises.
- 1.7. "Municipal Alcohol Policy" means the City's Municipal Alcohol Policy as described further in Schedule "B";
- 1.8. "Permitted Uses" means those uses more particularly described in clause 2;

## **2. GRANT OF LICENSE**

- 2.1. The Licensor hereby grants to the Licensee the licence (the "Licence") to use the Premises solely and actively for the purpose of hockey games, tournaments, clinics and practices and for no other purpose whatsoever, for a term of Five (5) years, commencing on August 1, 2013 and ending on May 1, 2018 (the "Term"), unless terminated early in accordance with the terms of this Agreement.
- 2.2. It is acknowledged and agreed by all parties hereto that the Licensee shall have priority use of that portion of the Premises comprised of a dressing room, a coach's office, space for a trophy case and promotional displays and an equipment room / laundry room, as set out in Schedule "A" (all such portions collectively referred to as the "Priority Use Areas"). When not in use by the Licensee, the Priority Use Areas may be used by the Licensor and/or the Licensor's invitees.
- 2.3. The Licensee shall be the primary licensee of the Premises but acknowledges and agrees that its right to use the Premises is non-exclusive and that the Premises may be available for use by the public and the Licensor when there are no games or practices scheduled by the Licensee, The Licensor will give the Licensee Seven (7) business days notice of any intent to use the Premises.
- 2.4. The Licensee covenants and agrees to use the Premises in such a manner and at such times so as to minimize interference with the Licensor's use of the Premises.
- 2.5. The Licensee accepts the Premises in their present condition and acknowledges and agrees that the Licensor 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 Premises, whether with respect to environmental matters or otherwise, or that the Premises 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 Premises, including the surface and subsurface conditions thereof. Neither the Licensee nor any permitted occupant shall have any recourse to the Licensor as a result of the nature or condition of the Premises, whether or not the Licensor 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.

- 2.6. The Licensor shall provide to the Licensee the relevant policies, and any updates to the policies, regarding the use of the Premises (see Schedule "B").
- 2.7. Licence not a leasehold interest - No legal title or leasehold interest in the Premises 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 Licensor 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 City. 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 Licensor any taxes (other than realty taxes), increased annual operating costs or other additional costs imposed on or incurred by the Licensor or the Lands as a result of the grant of this Licence or as a result of the use by the Licensee of the Premises. 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 Licensor, that the Licensor 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 Premises 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 Premises and the use thereof, without deduction, abatement or set-off.
- 3.4. The Licensor 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 Licensors shall be responsible for all realty taxes levied, charged or assessed against the Premises by municipal and provincial authorities.
- 4.2. The Licensee shall promptly pay, before delinquency, to the taxing authorities or to the Licensors, 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 Premises by the Licensee.

#### **5. UTILITIES**

- 5.1. The Licensors shall be responsible for all rates and charges for utilities, if any, used in connection with the Premises, 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 Licensors to enter onto the Premises at any time to inspect the Premises. Without limiting the foregoing general right of the Licensors to inspect or any other right of the Licensors, the Licensors shall be permitted to enter the Premises from time to time for the purpose of making repairs, alterations or improvements to the Premises or to remove any article or remedy any condition which in the opinion of the Licensors would be likely to lead to cancellation of any policy of Insurance on the Lands, the Premises 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 Licensors shall not be deemed to be a re-entry.
- 6.2. Notwithstanding anything herein contained, the Licensors shall have unrestricted access to the Premises 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 Licensors and all reasonable costs, expenses and expenditures of the Licensors of such emergency work shall be borne by the Licensee and payable forthwith upon written demand by the Licensors, and the Licensors shall have no liability to, or obligation to compensate, the Licensee for any loss or damage whatsoever resulting from such action by the Licensors. Without limiting the generality of the foregoing, the Licensors 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 Premises or any part or parts thereof are being carried out in an unsafe manner, and the Licensors 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.

## **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 (see Schedule "C" – Reporting Requirements) to review the programming, activities and operation of the Licensed Premises. There shall be a Pre-Season Report and Post-Season report. The details of each report are outlined in Schedule "C".
- 8.2. The Licensee shall address any facility issues that need attention from the Licensee in its reports.
- 8.3. The Parties shall inform each other of any tournaments or special events that are proposed or planned on the Licensed Premises.
- 8.4. Extensions - Upon the mutual consent of the Parties, extensions may be given for the submission of written reports.

## **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 Premises 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 Premises only with the written consent of the Licensor and 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 which includes the obligation to make repairs/renovations of a capital and non- fixed capital nature (e.g. adding locker stalls, painting), and that the Premises will be maintained in a safe, clean and tidy condition, and free from hazards. The City shall be

- responsible for the structural repair of only the roof and exterior walls of the Premises and Priority Use Areas;
- f) at all times keep the Priority Use Areas, the Premises, and any buildings, structures, erections or improvements thereon 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 Premises or any of the equipment, chattels, fixtures, buildings, structures, erections or improvements of the Licensor thereof or permit any overloading of the floors thereof; not to place therein any safe, heavy business machine, or other heavy thing, without first obtaining the consent in writing of the City;
  - i) ensure that all materials, equipment and supplies delivered to the Premises 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 Premises 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 Premises without the written consent of the Licensor, a Special Occasion Permit, and on such conditions as the Licensor may impose Including but not limited to strict compliance with the City of Hamilton Municipal Alcohol Risk Management Policy, the *Liquor Licence Act* (Ontario), as amended, the *Alcohol and Gaming Regulation and Public Protection Act*, 1996 (Ontario) and the regulations thereto;
  - l) neither permit nor allow the introduction or use of illegal narcotics upon the Premises;
  - m) ensure that all tools, equipment, supplies and materials are stored properly and in a safe and secure manner;
  - n) not use or permit to be used any part of the Premises for any dangerous, noxious or offensive business and not to cause or permit any nuisance in, at or on the Premises;
  - o) not use or produce on the Premises or allow to be brought on to the Premises any noxious, offensive, toxic or hazardous substance or any vehicles, equipment or parts which contain any such substances, or any substance which if it were to remain on or escape from the Premises would contaminate the Premises or any other property to which it came in contact. This provision shall not apply to prevent the Licensee from bringing vehicles and equipment, which contain gasoline and engine oil, upon the Premises provided that such vehicles are adequately protected against the escape of such substances;
  - p) make full restitution for such harm and damage resulting from failure to take adequate protective measures, and shall make good any such damage from whatever cause;
  - q) ensure that any and all contractors performing or engaged to perform any capital work or repairs to the Premises are approved in writing by the City in advance of commencing any such work or repairs and provide insurance naming the City 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.

- r) not do anything or permit anything to be done on the Premises which may constitute a nuisance, cause damage or loss or endanger the Premises, adjoining properties or any person.
- 9.2. The Licensor shall have the right, but not the obligation, to enter upon the Premises at any time to conduct and perform maintenance and repairs of the Premises to the standard of other hockey rinks of the City, 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 Premises according to City of Hamilton budget approvals.
- 9.4. The Licensor shall be responsible for rectifying and repairing any structural defects of the Premises.
- 9.5. The Licensee shall submit a list of any capital repairs requested to the Premises 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 City Council.
- 9.6. The Licensor shall be responsible for ongoing facility maintenance and operations on Licensee game days in the arena facility to the standard of other hockey rinks of the City, which standards may be amended by the Licensor from time to time, in its sole discretion.

## **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 Premises prior to entering the subject Premises.
- 10.2. The Licensee shall further comply at its own expense with the rules and regulations established by the Licensor for the Premises from time to time.

## **11. ALTERATIONS AND ADDITIONS**

- 11.1. The Licensee agrees that it shall not make any alterations whatsoever to the Premises without the prior written approval of the Licensor. Without limiting the generality of the foregoing, the Licensee shall not paint, wallpaper, construct, renovate, install or erect any buildings, structures, fixtures, grounds, improvements or other facilities without first obtaining the written approval of the Licensor for such works. The Licensee shall at its own cost and expense prepare the Premises appropriately for the approved use, and the Licensor shall not be

responsible in any way for any improvement or preparation of the Premises and the Priority Use Areas. 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 Premises.

- 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 Premises) in or upon the Premises or Priority Use Areas are, immediately upon placement, the Licensor's property without any compensation therefore to the Licensee and shall not be removed from the Premises by the Licensee at any time either during or after the Term, without the City's prior written approval. The Licensee will submit a list of non-affixed items (See Schedule D – Licensee's Non-Affixed Items) to the Licensor by July 1<sup>st</sup> of every calendar year to be approved by the Licensor.
- 11.3. 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.
- 11.4. 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.
- 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 Premises or Priority Use Areas without the prior written consent of the Licensor.
- 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 Premises and the Licensee shall forthwith discharge any liens arising therefrom at any time claimed or registered against or in respect of the Lands, the Premises 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 Licensor of any accident, injury or harm to any person on or using the Premises or of any damage, loss or defect in or to any part of the Premises or any damage or loss of any property of any person using the Premises or any damage or loss of any property of the Licensor in the Premises 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.

## **13. INSURANCE AND INDEMNIFICATION**

- 13.1. For the purposes of this Section, "Licensor" means the City of Hamilton, 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 Premises.

- 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 premises 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 Premises 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) when applicable, Broad Form Comprehensive Boiler and Machinery insurance on a blanket repair and replacement basis, with limits of accident in an amount not less than the full replacement costs of the property, with respect to all boilers and machinery owned or operated by the Licensee or by others (other than the Licensor) on behalf of the Licensee in the Premises or relating to or serving the Premises;
  - e) It is the responsibility of (name of 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 City and name of licensee as additional insured; and,
  - f) 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 Premises 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 Premises; (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 Premises at its sole risk, and the Licensor shall not be liable for any loss, injury or damage caused to persons using the Premises 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 Licensor. In addition and without limitation, the Licensee agrees that the Licensor, except to the extent that same is attributable or caused by the negligence of the City, 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 Premises or from the water, steam or drainage pipes or plumbing works of the Premises 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 Premises; and
  - ii. any loss or damage to all property in or about the Premises 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 Licensor's 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 Premises or by reason of non-payment of premiums; and
- e) the Premises 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 Licensor's 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 Licensor, including those payments not yet due if any, shall immediately become due and payable; and
- b) the Licensor shall have the right to terminate this Agreement, or in lieu of termination, the Licensor shall have the right to re-enter the Premises and to retake possession of the Premises and deal with them as it may choose.

14.3. When a default has occurred and the Licensor chooses not to terminate this Agreement, the Licensor 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 Licensor hereunder. The Licensor's rights under this Agreement shall not in any manner be prejudiced even if the Licensor 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 Licensor's rights in any way be limited or restricted by any other right or privilege that the Licensor 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 Licensor 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. LICENSOR'S RIGHT TO EARLY TERMINATION**

- 15.1. Notwithstanding any other provision of this Agreement, the Licensor shall have the right to terminate this Agreement at anytime, without cause, upon at least six months written notice and without any compensation to the Licensee whatsoever.
- 15.2. Notwithstanding any other provision of this Agreement, the Licensor shall have the right to terminate this Agreement at any time, with cause, immediately upon notice to the Licensee and without any compensation to the Licensee whatsoever.

#### **16. 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 Premises and make whatever arrangements are necessary to leave the Premises 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 Premises or supplies and materials deposited on the Premises by the Licensee, and replace any top soil or trees removed and shall restore the Premises 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 Premises to their former condition and shall be entitled to recover all costs and expenses arising from and related to same from the



And to the Licensee at: Stoney Creek Junior Hockey Club Inc.  
(Address TBD)

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 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.

## 21. MISCELLANEOUS

- 21.1. 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 Licensor and Licensee and their respective heirs, executors, administrators, successors and permitted assigns.
- 21.2. The Licensor 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 Licensor, including but not limited to any amount owing to the Licensor pursuant to the Licensee's Indemnification of the Licensor in this Agreement.
- 21.3. To the extent that the Licensor 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 City, or the order or direction of any government department, official or other authority, including the Licensor acting in its capacity 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 Licensor 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.
- 21.4. 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.
- 21.5. 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.

- 21.6. The headings to each section are inserted for convenience of reference only and do not form part of the Agreement.
- 21.7. Applicable Law - This Agreement shall be governed by, and construed under, the laws of the Province of Ontario.
- 21.8. 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 set-off and shall be paid by certified cheque to the "City of Hamilton". 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.
- 21.9. Time is of the essence for this Agreement and for every part hereof.
- 21.10. This Agreement shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.
- 21.11. Any schedules attached to or referred to in this Agreement shall form an integral part of this Agreement.
- 21.12. 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 Premises shall constitute a breach by the Licensee.
- 21.13. 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.
- 21.14. 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.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; EXECUTION PAGE  
FOLLOWS]**

**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.

**CITY OF HAMILTON**

*We have authority to bind the City/Licensors.*

\_\_\_\_\_  
R. Bratina, Mayor

Date:

\_\_\_\_\_  
R. Caterini, Municipal Clerk

Date:

**STONEY CREEK JUNIOR HOCKEY CLUB INC.**

*I/We have authority to bind the Licensee Corporation.*

\_\_\_\_\_  
Name:  
Title:

Date:

\_\_\_\_\_  
Name:  
Title:

Date:

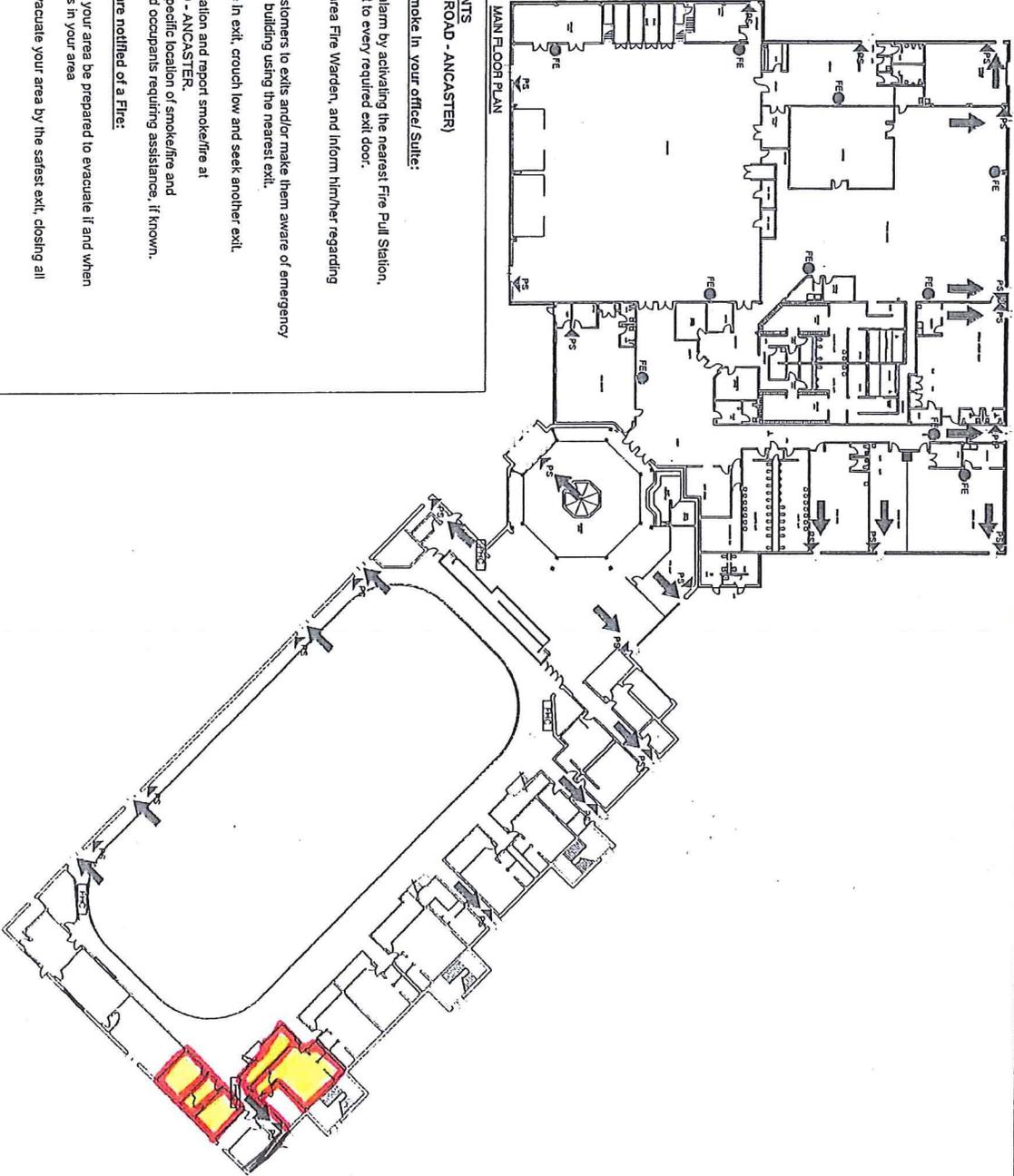
Approved by City of Hamilton,  
Legal Services Division:

\_\_\_\_\_  
Rashesh Mandani, B.A., J.D.  
Solicitor

**Schedule "A"**

**Licensee Priority Use Areas in Morgan Firestone Arena - Locations and  
Illustration**

- PROCEDURES FOR OCCUPANTS**  
**(385 JERSEYVILLE ROAD - ANCASTER)**
- 4.0 If you discover Fire or Smoke in your office Suite:**
- 1) Immediately sound the fire alarm by activating the nearest Fire Pull Station, which are located adjacent to every required exit door.
  - 2) If safe to do so, notify your area Fire Warden, and inform him/her regarding details of the fire situation.
  - 3) Assist other personnel or customers to exits and/or make them aware of emergency procedures. Evacuate the building using the nearest exit.
  - 4) If you discover fire or smoke in exit, crouch low and seek another exit.
  - 5) Phone "911" from a safe location and report smoke/fire at 385 JERSEYVILLE ROAD - ANCASTER. Advise the dispatcher of specific location of smoke/fire and any trapped or endangered occupants requiring assistance, if known.
- 4.1 If you hear an alarm or are notified of a Fire:**
- 1) If you hear an Alert Alarm in your area be prepared to evacuate if and when an evacuation alarm sounds in your area
  - 2) If you are notified of a fire evacuate your area by the safest exit, closing all doors behind you.
- Do Not Use the Elevators - Do Not Proceed To the Roof Area**



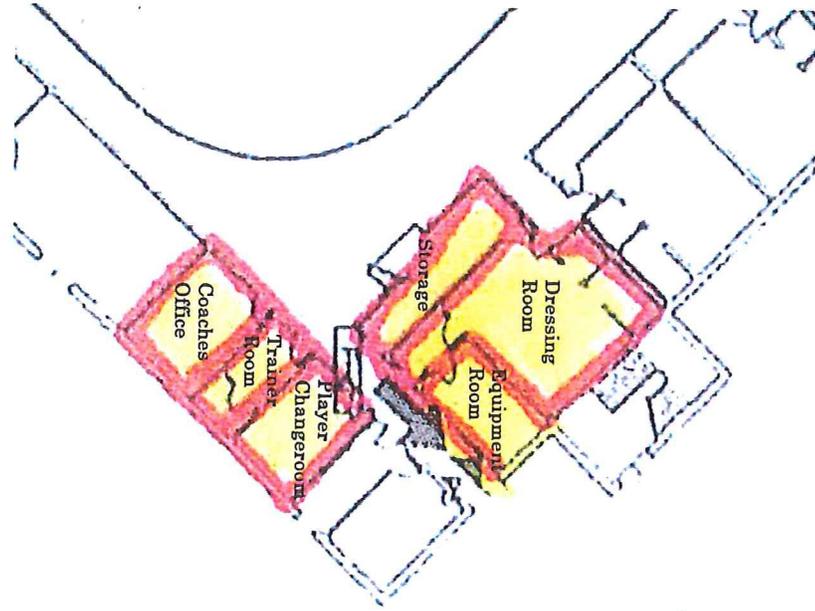
**FIRE SAFETY PLAN**

Morgan Firestone  
Arena  
385 Jerseyville Rd.  
ANCASTER

**LEGEND**

- ➔ EXIT ROUTE
- DOORS
- ST STAIR
- EL ELEVATOR
- ▲ PS PULL STATION
- FE FIRE EXTINGUISHER
- ☐ FIRE HOSE CABINET
- ▣ FHC FIRE ALARM CONTROL PANEL
- YOU ARE HERE





## Schedule "B"

### Policy Requirements

In accordance with this agreement the following policies need to be reviewed by the Licensee regarding their operations at Morgan Firestone Arena. The full policies will be handed over in hard copy and electronic form by the City of Hamilton at the time the agreement is approved.

The City of Hamilton agrees to send out via email and letter format any amendments to or additional policies that may relate to the agreement.

**City of Hamilton Policies:**

Zero Tolerance

Lightning Policy

Tobacco Free Policy

Rain Out Policy

Cancellation Policy

## Schedule “C”

### Reporting Requirements

The City of Hamilton and Licensee agree to meet semi-annually to review the operation and activities of the team and licensed premises.

The meetings will take place pre-season and post season to ensure all terms and conditions of the agreement are being adhered to.

Reporting Period	Reporting Dates	Reporting Due Dates	All reports and meeting must be submitted by the last week of the last month of the reporting period.
Pre-Season	August – January	January	
Post-Season	February – April	May	

**Pre-Season Report** should include report back information on each of the defined outcomes and any other information deemed appropriate.

**Post-Season Report** should indicate recommendations for future agreements and a specific description on how the existing agreement has benefited the Licensee and the community.

Data collected in Year 1 of the agreement will be used to establish benchmarks for reporting requirements for subsequent years.

**Schedule "D"**

Licensee's Non-Affixed Items