

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

ARENA LICENSE

This Arena License (the "License") is made by and between the City of Allen, Texas (hereinafter referred to as "City") and Allen Hockey Team, LLC, a Texas limited liability company (hereinafter referred to as "Team") (each a "Party" or collectively the "Parties"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City is the owner of a multi-purpose sports and entertainment facility in the City of Allen, Texas known as the Allen Event Center (the "Facility"); and

WHEREAS, City and Steven Brothers Sports Management of Allen LLC, a Texas limited liability company, doing business as Allen Americans ("Stephen Brothers") entered into that certain Arena License dated May 14, 2014 (the "Original Arena License") relating to the usage of the Facility, amended by First Amendment to Arena License dated October 6, 2015 (the "First Amendment") (collectively, the Original Arena License, as amended by the First Amendment, are referred to hereafter as the "Arena License"); and

WHEREAS, Stephen Brothers sold and conveyed the Allen Americans hockey team the subject of the Arena License to Team; and

WHEREAS, Stephen Brothers with the consent of City assigned the Arena License to Team; and

WHEREAS, the Parties desire to amend and restate the Arena License as set forth herein; and

WHEREAS, City has hired a ticketing services company as the exclusive ticket seller for the Facility ("Ticketer"); and

WHEREAS, the terms in Exhibit "A" and Exhibit "C" of this Agreement will be retro-active for the 2016-2017 League Season;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all of the Parties hereto, the Parties hereby agree as follows:

Article I
Definitions

In this License, the following words and phrases have the following meanings:

“Applicable Game Hours” means from two (2) hour before the start of each of Team’s exhibition, regular Hockey Season and play-off games to two (2) hour after the conclusion thereof, regardless as to when the City decides to open or close the Facility to the public. Public Team activities in the building conducted outside one (1) hour prior to game start or one (1) hour after game end will have limit of two (2) City staff members at no charge.

“Applicable Usage Hours” means from two (2) hours before the start of each of Team’s exhibition, regular Hockey Season and play-off games to two (2) hours after the conclusion thereof, regardless as to when the City decides to open or close the Facility to the public.

“Base Level of Service” means the services, personnel, and use of equipment set forth in **Exhibit “B”**.

“Business Day” means any day which is not a Saturday, Sunday or holiday recognized by the City for which the main offices of the City of Allen are closed.

“Complimentary Ticket” means a ticket that is not sold, nor including in sponsorship package or traded in kind for any value whatsoever, but distributed as a free ticket for the purpose of promoting games or events.

“Concession Revenue” means gross revenue generated from Concessions during the specified food and beverage period, less City’s costs, expenses, applicable sales and use taxes, and gratuities, if any.

“Concessions” means the sale of food and beverages (including alcoholic beverages) in the Facility by City, or person or entity contracted by City. Concessions do not include the sales of event merchandise.

“Effective Date” shall mean the last date of execution hereof.

“Event of Default” has the meaning given to it in **Section 5.1**.

“Excluded Areas” means the following areas of the Facility: (i) all “sit-down” restaurant or bar areas within the Facility where food and/or beverages are prepared and/or served for consumption within such premises, (ii) Concessions areas; (iii) any office/retail areas used by City or designated by City from time to time for licensing to third parties; (iv) Facility common areas and meeting rooms; (v) the community ice rink facility; and (vi) all other areas within the Facility including, but not limited to, areas designated by City and used for storage, security, maintenance or other operational purposes.

“Facility” shall mean the Allen Event Center located at 200 E. Stacy Road, Allen, Texas 75002, not including the Excluded Areas.

“Game Drop Count” shall mean the number of attendees entering the building and verified by either electronically scanned or stubbed tickets as confirmed by the City.

“Hockey Season” means “League” pre-season, regular season and playoffs that generally occur October through April, with playoffs generally occurring in the months of April through early June (“Hockey Season”).

“League” means the East Coast Hockey League (“ECHL”), or such other league as may be approved by the City.”

“License Fee” means the fees set forth in Exhibit “A”.

“Office/Retail Areas” means the areas within the Facility that City has leased or licensed to Team for office or retail purposes pursuant to a written agreement between the Parties.

“Origination Fee” means an upfront fee charged by the City, to a broadcast provider and/or internet provider for live recording, broadcast, webcast or similar distribution of building activity which uses City staff, equipment and resources.

“Premium Seats” means suites and club/loge seating within the Facility.

“Ticketer” means the company contracted by the City, from time to time, to sell tickets for seats at the Facility, from time to time.

Article II Grant of License

2.1 **Grant and Term.** (a) Upon the terms and conditions set forth in this License, and subject to Team’s continued satisfaction and compliance with the terms and conditions set forth herein, City hereby grants to Team, and Team hereby takes and accepts from City, an exclusive license to use the Facility (except for the Excluded Areas) during Applicable Usage Hours during the Hockey Season during the Term of this License for the purposes of: (i) playing Team’s League exhibition, season home and play-off games (approximately sixty-four (64) and which shall be no less than thirty (30) regular Hockey Season home games each season as determined by League), and when applicable League All-Star Game; (ii) practices, as provided for in Section 2.4 hereof; and during training camp, as provided for in Section 2.5 hereof; (iii) use of Back-of-House designated rooms as Team’s dressing room, visiting team’s dressing room, a game official’s room, a hospitality room for scouts and members of the media, a Team office, all on the day of event only; and (iv) any other use specifically permitted under this License (collectively the “Permitted Use”). The Permitted Use for exhibition, games and play-off games shall be limited to Applicable Game Hours. The public is not admitted to the Facility until the Applicable Game Hours. Admission of the public to the Facility prior to or after the Applicable Game Hours or for practices is not covered by the Base Level of Service. If the Team desires to

admit the public prior to and after the Applicable Game Hours Team shall pay such charges and fees for additional Facility personnel and costs, as determined by the City.

(b) **Office Space.** Team's rights under this License include the exclusive right to use approximately 1,305 square feet of office space (planned to include 5 offices, 2 cubicles, 1 reception desk, and 1 workroom). The City agrees to provide additional office space if available within the Facility for use by the Team to accommodate up to six (6) additional personnel with additional space evaluated annually (See **Exhibit "G"**). The rights of Team shall not extend to any Excluded Area. Team, at its sole cost and expense, shall be allowed to add improvements to Team's dressing room, upon reasonable approval of City, and any such improvements which are affixed to the building shall at once become part of the realty and be surrendered to City at the end of the Term (as defined below); any such improvements shall be accomplished in a good and workmanlike manner and in compliance with all applicable laws, and Team shall not permit any mechanic's, materialmen's or other liens to be filed against the Facility or the real property, nor against Team's interest under this License. City may ask Team to temporarily vacate Team's dressing room and/or training room upon City giving fair and reasonable notification, and the City shall repair any damage caused to Team's dressing room during such time. This request will not interfere with normal League scheduled home hockey games (including play-off and exhibition games), or scheduled practice, try out, or training camp sessions. Space may be used for added production or VIP spaces during the offseason for concerts or other spectacle show booked by City for the Facility. As an office tenant and Facility tenant, Team has obligations to ensure and assist in keeping the Facility secure by following security policies and procedures and not conducting action that compromise the security of the Facility. Failure to adhere to the Facility security policies and procedures will result Team paying additional staffing costs to the City.

(c) **Facility Access.** The Team recognizes and agrees that City may limit Team access to the Facility during events booked by the City, and agrees comply with such limitations and to communicate such limitations to Team employees and personnel, provided notice thereof is provided by the City to the Team. As an office user and Facility user, Team has obligations to ensure and assist in keeping the Facility secure by following security policies and procedures and not conducting action that compromises the security of the Facility. Failure to adhere to the Facility security policies and procedures will result Team paying additional staffing costs to the City.

(d) **Free Ice Time.** In addition and where possible pending previously scheduled events, Team may use the arena ice surface at no extra charge for recreational skating after each regular Hockey Season game played by Team in the Facility, if such usage is conducted in conjunction with local community groups and/or Facility sponsors. Spectators may be admitted not earlier than one (1) hour prior to game time. Any open and or free skating event must be previously approved by the City and fall within Applicable Game Hours. Skate rental services provided by Allen Community Ice Rink must be approved seven (7) days in advance.

(e) **Term.** The initial term of this License shall be for a period of five (5) years (the "Initial Term") commencing on the last date of execution hereof (the "Effective Date") and terminating after the last Team playoff game of the fifth (5th) regular Hockey Season (2021-2022 Hockey Season) ("Initial Term"), unless sooner terminated as provided herein, and shall be for all of Team's League home games. Team shall, during each Hockey Season during the Term play all Team League regular season home games at the Facility.

2.2 **Option to Renew.** At the expiration of the Initial Term, the Team and City have the right to mutually agree to extend the term of this License for: (i). additional terms of one (1) year each for a maximum of three (3) consecutive years, or (ii) an additional five (5) year term, (each a "Renewal Term") The Team shall notify City in writing of its desire to extend the term of the License not less than ninety (90) days prior to the expiration of then current Term. "Term" shall include the Initial Term and any Renewal Terms. With exception of termination under Section 5.1, if City intends to not renew, or renegotiate renewal terms, a two (2) year notice shall be provided.

2.3 **Scheduling.** Not later than June 1 of each calendar year, City and Team shall negotiate the scheduling of Team's hockey games for the then ensuing Hockey Season. Approximately thirty-six (36) home games (as determined by League annually) shall be scheduled between October 1 and April 30 during each Hockey Season during the Term of this License. City will use all commercially reasonable efforts each year to accommodate Team in scheduling its games at the Facility with the understanding that Team is one of several tenants of the Facility. The City shall make every reasonable effort to hold a minimum of twenty-four (24) weekend dates each year, defined as Friday through Sunday, for use by the Team for the Team's regular Hockey Season games for the following Team Hockey Season. If the dates have not been confirmed by June 1 of each year, the City shall provide team with a 14 day written notice to confirm dates, if dates are not confirmed by Team and League at expiration of 14 days, City has no obligation to hold such twenty-four (24) dates and may release such dates for other events and use by others. The City shall hold up to and no more than sixty (60) dates total, weekday and weekend dates combined, prior to June 1 of each year for Team use for the Team's regular Hockey Season games for the following Team Hockey Season. City may give preference to Team over other users on those occasions in which there is a conflict or potential conflict with another user, however City and Team each recognize the obligation to be reasonable and flexible with respect to the scheduling priorities of the other. Without limiting the generality of the foregoing, City and Team shall co-operate with each other in good faith with respect to the scheduling of Team's regular League season and playoff home games. For the purposes of establishing game dates for Team, the months during a League season will occur October through April, with playoffs generally occurring in the months of April through early June ("Hockey Season"). Team playoff scheduling will follow standards established in **Exhibit "F"**. It is acknowledged that City will be taking all reasonable measures to maximize the use and profitability of the Facility and that there will be other events held at the Facility that may, from time to time, conflict with dates requested by Team. Once a schedule has been agreed to by the Parties with confirmation by the League, City may not alter the schedule except by agreement with Team.

2.4 **Practices.** Team may schedule use of the Facility for its team practices and for visiting teams, but such use is subject to availability and only during normal operating hours. Any practice that is open to the public will not be covered by the Base Level of Service and will require the Team to pay such rates and charges established by the City for additional personnel and other costs for such usage. City understands that practice time on game or exhibition days may be required by the League and shall accommodate requests for such practices on days which the Team is scheduled to play a game at the Facility. The use of the Facility on days on which the Team is not scheduled to play a game at the Facility is subject to availability and not subject to the Base Level of Service and will require the Team to pay such rates and charges established by the City for personnel and other costs (including additional conversion and staffing) incurred for such usage.

2.5 **Training Camp & League Exhibition Games.** City understands that having the Facility available for preseason training and exhibition games is important in the operation of Team's business and, provided Team provides sixty day advance notice and there is no conflict with any other event on the Facility schedule, Team will have first right and priority scheduling for use of the Facility for holding Team's training camp(s) for players prior to the start of each League Hockey Season in conjunction of League training camp schedule. The Team use of the Facility for League Exhibition games would not use Arena License Fees (**Exhibit "A"**) structure but would be negotiated on a case by case basis with Building fees being determined by actual event expenses, no rent would be charged. City may use the community ice rink to fulfill the purposes of this Section. Team will engage in good faith discussions with City regarding sponsorship activities related to practice. Practices and Training Camp may be open to the public for Facility community relations purposes but such usage is not covered by the Base Level of Service and will require the Team to pay such rates and charges established by the City for personnel and other costs (including additional conversion and staffing) incurred for such usage.

2.6 **Food and Beverage.** Team shall exclusively use the food and beverage concession and catering services offered by the City. Team shall not bring or cause to be brought into the Facility any food and beverages unless granted approval according to **Exhibit "E"**. Team shall pay such costs, charges and rates (including deposits) as established by City, from time to time for such food and beverage services, which is subject to the terms and conditions set forth in **Exhibit "E"**. Team shall pay the costs and charges for food and beverage services for each event to the City at the settlement following the applicable event. Team, shall not offer, sell, or provide any sponsor, patron or other person any food and beverage package, coupon or voucher for any exhibition, game or play-off game without the prior written approval of the City.

2.7 **City Exclusive Rights.** City shall have, and retain the exclusive right to use and operate the Facility, except for the Permitted Use and other rights expressly granted herein to Team. City's exclusive rights shall include but is not be limited to:

- (a) to grant leases, licenses and sell tickets to use Premium Seats (including “party suites” to be leased on an event-by-event basis) within the Facility that have not been designated by the City for use and sale by the Team;
- (b) to provide for, operate (or contract with others to provide or operate) all restaurants, food and beverage services and Concessions within the Facility;
- (c) to sell permanent and non-permanent advertising rights to third parties for all areas within or on the exterior of the Facility that are part of the building inventory, including the advertising on the center ice for the Facility naming rights sponsor (to replace Allen Event Center wording), the scoreboards advertising panels, the LED ribbon board when allowable under 2.7E, including back-lit non-back-lit signs, outdoor plaza space and other promotional and advertising platforms, all at the sole discretion of City or City’s agent; Team may be granted the right to sell certain advertising or sponsorship rights on commission basis mutually agreed to between Team and City;
- (d) to sell the naming rights to the entire Facility and to seek capital sponsorships of specific components of, or items forming a permanent part of the Facility, such as, but not limited to, two side advertising panels per scoreboard, volm and concourse signage, Concessions and pouring rights in respect of alcoholic and non-alcoholic beverages (all revenue of which shall belong to City). The Party obtaining such naming rights shall be entitled to significant and prominent interior signage locations, established in the reasonable discretion of the City. Each capital sponsor of a specific component of or item forming a part of the Facility shall be entitled to a significant interior sign and, where practicable, such sign shall be located on or near the component or item so sponsored, the elements of which shall be established in the reasonable discretion of the City. All of the revenues from the sale of such naming rights and all of the proceeds of such capital sponsorships and all costs associated with obtaining same, shall be for the account of City exclusively with any marketing company being compensated by City. It is understood that where City sells market category dominance sponsorship contracts, Team shall be included to the extent that Team’s exclusive rights are impacted;
- (e) to market and use the video boards and/or the LED ribbon board, for the sole purpose of fulfilling City’s obligations for the purpose of promoting special events and activities at the building. The amount of time and length of usage shall be during the game or exhibition and will be mutually agreed upon by both Parties and shall not exceed a total of 10 minutes during each game;
- (f) to market and use up to twenty-five percent (25%) of the time or usage of the LED ribbon board during pre-game and post-game;

- (g) in City's sole discretion, make available to Team the right to sell non-Team inventory on terms to be agreed to by the Parties;
- (h) to sell and retain all Facility parking if applicable;
- (i) to lease common area and meeting space;
- (j) upon request to receive up to forty (40) complimentary tickets per game from Team to be pulled from one of the top three tier price levels;
- (k) to charge any broadcast/Internet provider, an "**Origination Fee**" for either broadcast or webcast of event, established by City from time to time based on added City personnel time, resources or expense;
- (l) to place City name and logo on the center ice;
- (m) to exclusively provide all food and beverage services for the Facility;
- (n) to use the City designated suites, including tickets;
- (o) at City's request, Team may be granted the right to sell certain advertising or sponsorship rights on commission mutually agreed upon between Team and City; and
- (p) all other rights related to the Facility and any rights not expressly granted to Team.

2.8 **City's Exclusive Obligations.** City shall in connection with the Permitted Use have the right:

- (a) to comply with the terms of this Agreement;
- (b) to provide an appropriate, safe, well maintained and clean Facility for the intended use;
- (c) to provide adequate, safe, well maintained and clean parking access for the Facility's intended use;
- (d) to pay revenue to Team pursuant to **Exhibit "C"** at Settlement following the applicable event.

2.9 **Team's Exclusive Rights.** Team shall in connection with the Permitted Use have the right:

- (a) to receive the revenue for all non-Premium Seats through Ticketer and to receive the revenue for all Premium Seats as described in Exhibit "C" and Exhibit "D". Team may release unsold seats prior to a game for City to sell on behalf of Team;
- (b) to sell game programs/magazine(s) for Team's games in the Facility during Applicable Game Hours, to sell advertising space therein, to set up a reasonable number of portable kiosks in the Facility, the number and locations to be determined by Team, to sell Team and League souvenirs and shall receive all revenue from this exclusive right;
- (c) to enter into agreements with third parties concerning the broadcasting on radio, television, satellite, broadband or other media, of Team's games played at the Facility; provided such company pays to the City the applicable origination fee (based on Section 2.7(k)). Team shall be responsible for the costs associated with the set-up and/or transmission of such broadcasts and shall receive all revenue from this exclusive right;
- (d) to sell Team and/or League or League member team branded souvenirs at locations in the Facility designated by the City;
- (e) to sell advertising rights for the LED ribbon board, the playing field and the dasher boards/side boards and other non-permanent advertising and marketing or distribution of products in the concourse areas, as more particularly described in Section 3.3(a) and shall receive all revenue from this exclusive right;
- (f) to place one Team logo on the center ice;
- (g) the personal use of the suite (included in the suites designated for use and sale by Team) known as the "Owner's Suite" (twelve seat) during League events including tickets (however Team shall pay for any food and beverages served in the suite); and the right of first refusal (exercisable only up to fifteen (15) days after public on-sale date to any particular event) to use such suite or other suite tickets for all non-hockey events ticketed by Ticketer at the standard suite single-event prices; and
- (h) to use and sell Premium Seats designated by the City set forth in Exhibit "D".

2.10 Team's Obligations. Team shall have the following obligations:

- (a) Team agrees that the name "Allen Texas" and/or "Allen Event Center" will accompany the League name and will be included in all Team references to the Facility. Team agrees that all of its marketing and promotional material will contain reference to the "City of Allen" and/or the "Allen Event Center", or "AEC" if agreed, shall be displayed in the center circle ice of the playing surface.

- (b) Team shall be responsible for all expenses and costs for use of the Facility for the Permitted Use in excess of the Base Level of Service and the following additional expenses: (i) collection of state and local sales taxes for taxable sales by the Team; (ii) credit card charges or surcharges for Facility Box Office and Ticketer sales; (iii) fees charged by the City as established, from time to time, for added services, equipment usage, set up, spot light operators, change-over from one type of event to another, housekeeping clean up personnel, stage hand labor, conversions, guest services, audio visual system and operation of said equipment, food and beverage in excess of the Base Level of Service (City shall provide list of current fees at least 30 days prior to each Hockey Season); (iv) catering upon request at rates established by the City from time to time; (v) food and beverage service including food and beverage packages, coupons and vouchers which may be offered at negotiated rate; and (vi) any other service, personnel, or equipment not included in the Base Level of Service.
- (c) Payment of the License Fee.
- (d) Team shall exclusively utilize Ticketer in the sale of all tickets to Team's games played at the Facility.
- (e) Exclusively use the food and beverage services offered by the City in accordance with the terms and conditions set forth in **Exhibit "E"**; and pay for the cost for such food and beverages for each event to the City at the settlement following the applicable event.

Article III Financial Terms

3.1 License Fee.

- (a) In consideration of the License granted to Team to use the Facility for the Permitted Use during Applicable Game Hours during the Term, Team shall pay to City the License Fee for each regular Hockey League season and play-off game played by Team in the Facility during the Hockey Season during the Term of this License as set forth in **Exhibit "A"** (the "License Fee"). The License Fee for each game or play-off game, as the case may be, shall be paid to the City at the Settlement following the applicable event. Failure of the Team to pay, or timely pay, the License Fee to the City for any game or play-off game and/or any costs and charges for food and beverages or other services provided by the City shall entitle City to suspend the Team's Permitted Use of the Facility and/or to draw on the Letter of Credit as provided in **Section 3.11**.

- (b) In consideration of the payment of the License Fee the Team shall be entitled to the following: (i) the Permitted Use of the Facility not including the Excluded Areas; (ii) utilities (electrical and HVAC); and (iii) Base Level of Service.
- (c) Any service, personnel or use of equipment provided by the City for any exhibition, game or play-off game which is not included in the Base Level of Service shall be charged at the then rates or fees established by the City, and paid by the Team to City at the Settlement following each such event.
- (d) If Facility retail store is available and Team chooses to use for retail sales, Team agrees to pay monthly rental fee (if any) for the use of the Facility retail store at a rate (if any) to be mutually agreed in writing prior to occupancy. Team reserves the right to terminate Team's use of the Facility retail store space at any time with 120 day prior written notice. If Team is the only occupant of the Facility retail store, Team shall be responsible for the supply and cost of appropriate staff and may contract with City for the provision thereof. If there is more than one occupant of the Facility retail store, then Team shall pay its pro-rata share of the allocated rent to City plus its pro-rata share of the costs of appropriate staff to City for City's supply of the staff; such rent and cost proration to be based on space used and time used. City and Team shall mutually agree to the hours of operation of the Facility retail store. City agrees that at termination of current Facility retail store tenant agreement (anticipated May 2019), Team shall have first right of refusal to occupy the Facility retail store.
- (e) Office Space, including common area maintenance and utilities; Team will be responsible for all other costs of occupancy and use such as communications including voice and data equipment and transmission lines/cabling, furniture and office equipment.

3.2 **Revenue Sharing with Team.**

- (a) **Concession Revenue.** City shall pay to the Team at Settlement a percentage of the Concession Revenue set forth in **Exhibit "C"**;
- (b) **Tickets.** Team shall be entitled to receive one hundred percent (100%) of the sale of all non-Premium Seats as described in **Exhibit "D"**;
- (c) **Hockey Season Ticket Printing.** Team shall pay the costs of printing all Hockey Season ticket books; and the printer ticket stock (individual game tickets, group sales tickets, promotional tickets) used in the offices of the Team;
- (d) Team shall have the right to annually audit the applicable Concessions records; and

- (e) Team shall retain 100% of the revenue from sales of Team merchandise.

3.3 Team Inventory.

- (a) Provided Team pays for all associated costs and expenses, Team shall have the right to sell and retain 100% of the revenues from the following inventory items: all dasher boards, all penalty boxes, all player benches, up to sixteen (16) pairs of on-playing surface logos/in-Ice arena logos, and other locations as mutually agreed to ("Team Inventory"). The terms of all such sales shall be subject to the prior approval of the City if a potential sponsorship conflict exists or an Arena License Agreement conflict is present.
- (b) Except for Team Inventory, City shall have the exclusive right to sell and retain all permanent advertising and signage.
- (c) City and Team recognize the Facility and Team are in the same selling environment and, as such, certain accommodations have to be made in case of cross-promotional sales. The terms of any cross-promotional sale and revenue distribution thereof will be negotiated between City and Team on a facts and circumstances, case-by-case, good faith basis.

3.4 Inclusions and Exclusions from the License Fee. In consideration of payment of the License Fee the Team shall not be responsible for paying the following:

- (a) property taxes, if any, assessed against the Facility, except for any property taxes assessed the Team's leasehold interest and personal property in the Facility, if any;
- (b) the costs of Base Level of Service;
- (c) the costs of operating, maintaining and repairing the Facility in the ordinary course (but not repairs or maintenance required by reason of the negligence of, or misconduct by, Team or any person for whom, in law or otherwise, Team is responsible, or any invitee of Team, including spectators and visiting teams);

In addition to the payment of the License Fee, Team shall be responsible for:

- (d) the costs of any personnel, service and equipment in excess of the Base Level of Service during Applicable Usage Hours;
- (e) the costs of food and beverage, referees, linesmen, office officials, and forms of music & entertainment, to include ASCAP, BMI, SESAC, SAG, AFTRA and other applicable licensing fees and reader board/scoreboard operators;

- (f) its cost of the Team's insurance required herein;
- (g) the costs of repairs and maintenance required by reason of the negligence of or deliberate misconduct by Team, or any person for whom, in law or otherwise, Team is responsible, or any invitee of Team, including spectators and visiting hockey teams; however, Team shall not be responsible for the costs of repair and maintenance occasioned solely by reason of ordinary wear and tear;
- (h) the cost of any additional electrical wiring or cable accessories related to computer, phone and other means of electronic communication for Team or associated with Team's games in excess of the normal and customary requirements for the Permitted Use;
- (i) the cost of all set up furnishings and equipment, beyond normal and customary locker room furnishings and equipment; and
- (j) any video or studio costs, including labor, that are beyond the Base Level of Service.

3.5 Payment of Ice Time for Practices and Training Camp. City shall provide Team with free ice time during the then current "**Hockey Season**" between 10 a.m. and 11:30 a.m., Monday through Friday. Upon reasonable prior written notice to City, Team shall have the right to schedule an additional 25 hours of free ice time (subject to Facility schedule) for Team's during each League Season (the "Free Ice Hours") without rollover. After Team has used its Free Ice Hours for the then-current Hockey Season, and upon reasonable prior written notice to City, Team shall have the right to schedule additional ice time (subject to Facility schedule) at the rate of \$100 per hour, adjusted annually for CPI, for the use of the ice surface for practices or training camp pursuant to Sections 2.4 and 2.5 (the "Practice Hours"), except for practice time on days on which Team is scheduled to play a game at the Facility, for which there shall be no charge for Team or visiting "League" team. The City may use the adjacent ice facility to fulfill the purposes of this **Section 3.5**. The grant of ice time (whether paid or not) to Team is non-transferrable, personal to Team, and Team may not sublet or otherwise allow any third party to use such ice time. Team may cancel any scheduled Free Ice Hours or Practice Hours at any time prior to 7 days before the scheduled time without charge or loss of free ice time; however, if due to short notice the Team shall be reasonable for any additional Facility costs due to staff scheduling, Facility opening and/or cancellation of any Facility programming.

3.6 Retail Store Operations. City retains the sole right to provide space for the operation of a retail store in accordance with Section 3.1 (d).

3.7 Youth Hockey. Team may be awarded the right to operate a youth, recreational, or amateur hockey program in the Facility under a separate contract, and under terms and conditions, at the City's discretion.

3.8 **Revenue Not Subject to Sharing.** City shall be under no obligation to share, nor shall Team have any entitlement to receive any share of:

- (a) Any revenues arising from or pertaining to events held at the Facility outside Applicable Usage Hours or not directly related to Team;
- (b) Any revenues from the sale of naming rights, vendor agreements or any proceeds of capital sponsorships made or obtained by City, except for logos on the arena ice, unless the City agrees otherwise in writing in advance that a sponsorship has been sold by Team; and
- (c) Any other Facility revenues not referenced herein.

Team shall be under no obligation to share, nor shall City have any entitlement to receive any share of:

- (d) Revenues arising from the sale of game night programs/magazines and sponsorship promotional items for Team's games in the Facility during Applicable Usage Hours or from the sale of advertising space therein;
- (e) Revenues from the sale of Team Inventory;
- (f) Revenues from sales of Team Merchandise; and
- (g) Revenues arising from or pertaining to the broadcasting on radio, television or Internet of Team's games played at the Facility; provided the City is paid the applicable "**Origination Fee**" for such broadcast per Section 2.7(k).

3.9 **Payment.** The License Fee and an amount which is owed by City to Team hereunder, or by Team to City hereunder, in respect to any particular exhibition or game played at the Facility, shall be due and payable not later than the tenth (10th) business day after the date the City delivers an itemized statement for the amount(s) claimed to be owed by the City and/or Team for the respective exhibition or game (the "Settlement"). Any amounts due and payable under this License which are not paid Thirty (30) days at completion of League Season shall bear interest at the rate of one and one-half percent (1½%) per month, or the highest legal rate, whichever is lower, until fully paid. The City shall provide Team with an appropriate supporting documentation for all charges in a form reasonably acceptable to the Parties. Any Team dispute of the Settlement must be made in writing and delivered to City within (10) business days after receipt of each Settlement. The Settlement shall be deemed final if Team fails to timely dispute the Settlement. The City shall have the right to suspend the Team's Permitted Use without termination of this Agreement and/or draw on the Letter of Credit (hereinafter defined) as set forth in Section 3.11 in the event any amount due to the City is not timely paid.

3.10 **Audit Rights.** Either Party shall have the right to audit any of the records of the other Party in respect to any revenues, expenses, fees or payments hereunder. Each Party shall make available to the other Party or its representative such information as such Party may reasonably require for the purposes thereof. The cost of the audit shall be borne by the Party requesting the audit, unless the audit discloses that the amount in question owed to a Party was understated by more than five percent (5%), in which event, the other Party shall pay the reasonable cost of the audit.

3.11 **Letter of Credit; Suspension of Permitted Use.** During the Term (including any Renewal Term), Team shall provide an irrevocable letter of credit in favor of the City in a form reasonably acceptable to the City with a financial institution approved by the City in the amount of Fifty Thousand Dollars (\$50,000.00) capable of being drawn by the City in the event the Team fails to pay or timely pay the License Fee or other costs due City, or in the event of an uncured Event of Default by Team (without terminating this License), or in the event of termination of this License Agreement by the City based on an uncured Event of Default or breach of this License Agreement by Team (the "Letter of Credit"). The Team shall have a continuing duty during the Term to maintain such amount of the Letter of Credit in the event the City draws on the Letter of Credit for any reason other than for termination of this License for an uncured Event of Default. The Team shall provide the Letter of Credit within ninety (90) calendar days following the Effective Date, and prior to the commencement of any use of Facility to include team locker room, office space and ice.

3.12 **No Other Rights Granted.** Team shall have no other rights relative to its use of the Facility other than those rights expressly granted under this License.

Article IV Certain Operational Matters

4.1 **Suite and Seat Licensing.** No person may occupy or use (whether sitting or standing) any Premium Seat during Applicable Game Hours unless such person holds a valid ticket for such seat for the exhibition or game issued by the City or Team in accordance with this License. In addition the holder of a suite is obligated to purchase a number of tickets for play-off home games equal to the number of fixed seats in such private suite.

4.2 **Ticket Prices.** Team may establish and revise ticket prices (not including any parking, ticket fee or ticket fee charged by the City) from time to time for admissions to Team's games played at the Facility. However, ticket prices shall be reasonable and competitive having regard to prices for similar tickets in other League arenas

4.3 **Complimentary City Tickets.** City shall be entitled to up to 40 complimentary tickets to each exhibition, regular Hockey Season and play-off game played by Team in the Facility. Complimentary tickets redeemed by City at gate and on Facility Box Office reports shall be counted for attendance purposes and Game Drop Counts described in **Exhibit "C"**.

4.4 **Complimentary Team Tickets.** Team shall be entitled to up to 1000 complimentary tickets to each exhibition, regular Hockey Season and play-off game played by Team in the Facility.. Complimentary tickets redeemed at gate and on Facility Box Office reports, up to (1,000) One Thousand, shall be counted for attendance purposes and “Revenue Share” drop count. Complimentary tickets above 1,000 will not count toward and Game Drop Counts as described in **Exhibit “C”**.

- (a) Any Friday or Saturday game that exceeds 1,000 standard comps issued by Team, Team will be assessed a \$1.00 fee to each ticket above 1,000, payable to City at settlement.
- (b) Comps in excess of 1,000 will be mutually agreed upon by Team and City for games held on Sunday through Thursday.
- (c) Comps excluded from 1,000 limit include Military Comps, Home & Visiting team Player Comps, Season Ticketholder Exchange Comps and Group Sales Comps (example: buy 15 tickets get 5 comp).
- (d) Tickets included within paid sponsorship or trade agreement will be excluded from Complimentary Team Ticket allotment if mutually agreed upon by City and Team, not to be unreasonably denied.

4.5 **Sponsorship and Signage Conflicts.** Each sponsorship agreement shall provide that City’s obligation to permit the use and maintenance of any nonpermanent interior sign for or on behalf of an advertiser introduced by Team pursuant to **Section 3.3(b)** or otherwise shall be subject to the following:

- (a) Team advertising shall not be permitted by or on behalf of a person, organization or entity which City believes in good faith to be:
 - (i) in competition with the person, organization or entity holding the naming rights to the Facility, to include, all types of related businesses or any other capital sponsor or vendor of a specific component of or item forming a part of the Facility;
 - (ii) in competition with any person, organization or entity with whom, prior to such time, City has entered into an agreement providing for advertising rights within the interior of the Facility during Applicable Game Hours if such agreement is still in force and effect; or
 - (iii) offensive conduct or breach of any law or regulation or otherwise likely to bring City and/or the Facility in disrepute;
- (b) size, location or character of such signs shall require the prior written approval of the City, such approval not to be unreasonably withheld, conditioned or delayed;

- (c) such advertising is to be sold on fair market terms and conditions; and
- (d) within a reasonable time prior to the scheduled first hockey game of each League season, the City shall provide to Team a list of alcoholic beverage vendors, soft drink vendors and concourse food vendors that City has either entered into contracts with or is in negotiation with to assist Team with its permitted advertising and sponsorship sales efforts. .

4.6 **Parking.** City within its discretion shall provide Team Back of House parking spaces on League game days for use by Team's staff and designated V.I.P.'s subject to City's reasonable approval. On Team game days, Team and City agree to split non-handicapped parking spaces in the south uncovered surface lot adjacent to Event Center during "Applicable Usage Hours". Team shall be responsible for any additional incurred costs resulting from agreed upon requests. These costs may include incurred, such as parking garage maintenance, cleaning or staffing.

4.7 **Home Games at the Facility.** Team shall, during the entire term of this License, play all its exhibition, regular Hockey Season and play-off games where it is the home team at the Facility except for exhibition games which, for promotional purposes, Team wishes to play at a location other than the Facility or the home facility of another League team, and for which Team has requested and received City's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed). Except as aforesaid Team shall not, during any portion of the Term of this Agreement, play any League exhibition, regular Hockey Season or play-off game where it is the home team at any location other than the Facility.

4.8 **Professional Ice Hockey Exclusive.** During the Term of this License, City shall not, without the prior written consent of Team in its sole discretion, permit the use of the Facility for the playing of professional and junior ice hockey except: for periodic exhibition games and training camps (whether domestic or international and including, without limitation National Hockey League games). City will provide Team with a single right of first refusal, per event, to promote each such game/camp. Should Team decline, or fail to respond to the notice of such right of first refusal within seven calendar days from receipt thereof, City may pursue the event without compensation to Team. Nothing in such provision will apply to the playing of ice hockey at the Facility other than at the professional level and Team shall have no right to object to the use of the Facility for youth, recreational, amateur, high school, collegiate tournament, world junior or Olympic hockey.

4.9 **Insurance.**

- (a) The Team shall during the Term obtain and maintain in full force and effect at its expense, the following policies of insurance and coverage:
 - (1) **Commercial General Liability Policy** covering bodily injury, death and property damage, including the property of the City, its officers,

contractors agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to license, lease or use of the Facility pursuant to this License with minimum limits on a per project basis of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage with a minimum limit of Two Million Dollars (\$2,000,000), and Personal and Advertising Injury with a minimum per occurrence limit of One Million Dollars (\$1,000,000). This policy shall be primary to any policy or policies carried by or available to the City;

- (2) Workers' Compensation/Employer's Liability Insurance Policy in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than \$500,000/\$500,000/\$500,000;
 - (3) Automobile Liability Insurance Policy covering all operations of the Team pursuant to this License involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability; and
 - (4) Excess Liability Insurance Policy with a limit of not less than \$2,000,000. Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall be provided on a "following form basis". Team waives all rights against the City for recovery of damages to the extent these damages are covered by the umbrella liability insurance obtained by City pursuant to this Agreement. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.
- (b) Waiver of Subrogation Rights. The Commercial General Liability, Worker's Compensation, and Business Auto insurance required pursuant to this License shall provide for waivers of all rights of subrogation against the City;
 - (c) Additional Insured Status. With the exception of Worker's Compensation Insurance, all insurance required pursuant to this License shall be endorsed to include and name the City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations;

- (d) Certificates of Insurance. Certificates of Insurance in a form satisfactory to City and copies of policy endorsements shall be delivered to City prior to the commencement of the use or entry of the Facility under this License and prior to commencement of any League during the Initial Term any prior to any Renewal Term hereof. All required policies shall be endorsed to provide the City with 30 days advance notice of cancellation or material change in coverage;
- (e) On every date of renewal of the required insurance policies, the Team shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Team shall, within ten (10) business days after written request, provide the City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the Certificates of Insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the continuation of the use and occupancy of the Facility by the Team. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this License; and
- (f) Carriers. All policies of insurance required to be obtained by the Team pursuant to this License shall be maintained with insurance carriers that are satisfactory to City and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsement submitted by the Team's insurer or broker. Certificates of Insurance and policy endorsements received from any other source will be rejected.

4.10 Sale of Facility or Assignment of Facility License or Operating Rights. The City may sell the Facility and assign this License to the purchaser at any time without the consent of the Team. In the event that City assigns its rights under this License, then provided such third party enters into an agreement with Team assuming the obligations of City under this License as and from the date of sale or assignment, then City shall be released from all such obligations so assumed.

4.11 Assignment. Team may not assign any of its rights, or delegate any of its obligations, in whole or in part without the prior written consent of the City Manager of City, which may be withheld in its sole and absolute discretion and for any or no reason. Any attempted assignment or delegation shall be null and void. In the event of an assignment to which the City has consented, the assignee shall be required to provide a letter of credit as set forth in Section 3.11.

4.12 **City Covenants.** City covenants with Team that, throughout the Term of this License:

- (a) Team shall have quiet enjoyment of the Facility (other than the Excluded Areas) during Applicable Usage Hours;
- (b) City will operate the Facility in compliance with all applicable laws, codes, by-laws and regulations;
- (c) City will apply any operating rules and procedures for the Facility that it may choose to devise and implement to Team and all other users of the Facility in a fair and non-discriminatory manner, such rules and procedures to be reasonable and in keeping with the intent of this License; and
- (d) City will maintain, repair and replace the Facility such that it is at all times in good and proper operating condition save and except for reasonable wear and tear and Team's obligations under this License.

4.13 **Team's Covenants.** Team covenants with City that it shall, throughout the Term of this License, at its sole cost and expense:

- (a) operate Team in a manner consistent with the requirements and practices of the League and its other member teams;
- (b) purchase and maintain insurance in accordance with Section 4.9; and
- (c) maintain its membership and participation in the League.

4.14 **Team's Indemnity.** TO THE FULLEST EXTENT ALLOWED BY LAW THE TEAM SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, INVITEES, AND EMPLOYEES (COLLECTIVELY THE CITY) FROM AND AGAINST ANY SUITS, ACTIONS, LOSSES, COSTS, EXPENSES, DAMAGES, CLAIMS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY FEES ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF A PERSON, OR PROPERTY DAMAGE INCLUDING THE LOSS OF USE OF ANY PROPERTY ARISING FROM OR ALLEGED TO ARISE OUT OF THE USE OF THE FACILITY BY THE TEAM, ITS EMPLOYEES, CONTRACTORS, SUB-CONTRACTORS, AND INVITEES OR THE RESULT OF ANY NEGLIGENT ACT OR OMISSION OR ANY INTENTIONAL ACT OR OMISSION BY THE TEAM, ITS EMPLOYEES, CONTRACTORS, AND SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM, IT'S CONTRACTORS OR SUB-CONTRACTORS, OR ANYONE FOR WHOSE ACTS THE TEAM MAY BE LIABLE, OR DUE TO THE VIOLATION OF ANY

ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY THE TEAM, ITS EMPLOYEES, CONTRACTORS AND SUB-CONTRACTORS, OR ANY OF THEIR AGENTS AND EMPLOYEES, OR RESULTING FROM THE BREACH OR DEFAULT OF THIS LICENSE BY THE TEAM, ITS EMPLOYEES, CONTRACTORS, SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM OR ANYONE FOR WHOSE ACTS THE TEAM MAY BE LIABLE, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE TEAM, ITS EMPLOYEES, CONTRACTORS OR SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM, ITS SUB-CONTRACTORS OR ANYONE FOR WHOSE ACTS THE TEAM OR ITS SUB-CONTRACTOR MAY BE LIABLE, OR THE NEGLIGENCE OR WILLFUL ACT OF ANY SPECTATOR OR OTHER INVITEE OF TEAM .

INDEMNIFICATION FOR EMPLOYEE INJURY CLAIMS. WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, TEAM HEREBY INDEMNIFIES AND HOLDS HARMLESS THE CITY FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF THE TEAM, ITS CONTRACTORS, OR SUB-CONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, IT BEING THE EXPRESSED INTENT OF THE TEAM AND THE CITY THAT IN SUCH EVENT THE TEAM IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS NOT ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF TEAM'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS CONTRACTORS OR SUB-CONTRACTORS. WITH REGARD TO CLAIMS AGAINST ANY PARTY SEEKING INDEMNITY UNDER THIS LICENSE WHICH ARE MADE BY AN EMPLOYEE OF THE TEAM, ITS CONTRACTORS, AND SUB-CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM, ITS CONTRACTORS AND SUB-CONTRACTORS, OR ANYONE FOR WHOSE ACTS THE TEAM, ITS CONTRACTORS OR SUB-CONTRACTORS MAY BE LIABLE. THE INDEMNIFICATION OBLIGATION UNDER THIS LICENSE SHALL NOT BE LIMITED BY ANY LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE TEAM, ITS CONTRACTORS OR SUBCONTRACTORS OR ANY OTHER EMPLOYER UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER SIMILAR EMPLOYEE BENEFIT ACTS. THE TEAM SHALL PROCURE LIABILITY INSURANCE COVERING TEAM'S OBLIGATIONS UNDER THIS SECTION.

INDEMNIFICATION FOR COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED ABOVE, THE TEAM HEREBY INDEMNIFIES, AND HOLDS HARMLESS THE CITY FROM AND AGAINST ANY CLAIM, DAMAGE,

LOSS, OR EXPENSE AND ATTORNEYS' FEES ARISING OUT OF OR RELATING TO ANY CLAIM AGAINST THE CITY ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH TEAM'S USE OF THE FACILITY EXCEPT TO THE EXTENT THE INFRINGEMENT IS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CITY INDEMNITEES.

IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS LICENSE OR THE ADDITIONAL INSURED REQUIREMENTS UNDER THE INSURANCE REQUIRED BY THIS LICENSE, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE CONTRACTUAL OBLIGATIONS AND SHALL OPERATE TO AMEND THE OBLIGATIONS TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS LICENSE SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE FOR A PERIOD OF FOUR (4) YEARS.

Article V Miscellaneous

- 5.1 **Default.** The following occurrences shall be considered "Events of Default":
- (a) Team shall fail to pay any amount due hereunder to City when due and such default shall continue for a period of more than Thirty (30) days after written notice thereof has been given to the Party responsible for such payment;
 - (b) Team shall breach or fail to perform any of its covenants or obligations hereunder and such default shall continue for a period of more than Fifteen (15) days after written notice thereof has been given to it;
 - (c) Team shall: (i) become insolvent or generally not pay its debts as such debts become due; (ii) admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or (iii) institute or have instituted against it any proceeding seeking (x) to adjudicate it as bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for the appointment of a receiver, trustee or other similar official for it or for any substantial part of its assets, and in each such case such proceeding is not terminated, stayed or set aside within a period of sixty (60) days after it is instituted; or

- (d) Team shall fail to meet attendance performance measures as outlined in Article V, Section 5.2
- (e) City breaches or fails to perform any of its financial covenants or obligations hereunder and such default shall continue for a period of more than thirty (30) days after written notice thereof to City.
- (f) City shall breach or fail to perform any of its covenants or obligations hereunder and such default shall continue for a period of more than Fifteen (15) days after written notice thereof to City.

If an Event of Default shall occur, the non-defaulting Party shall deliver written notice to the defaulting Party and if such Event of Default is timely cured, the non-defaulting Party, without prejudice to any other right or remedy that may be available to the non-defaulting Party, whether under this License or otherwise at law or in equity, may terminate this License.

5.2 **Agreement Performance Measures.**

- (a) City may at any time during the Initial Term terminate this License if regular Hockey Season per game average attendance Drop Count falls below the following thresholds:
 - Year (1) One: (2,200 per game average)
 - Year (2) Two: (2,300 per game average)
 - Year (3) Three to (5) Five: (2,800 per game average)
 - Attendance is defined by Drop Count from building Box Office reports
- (b) If the City sends written notice to terminate because of the failure of the Team to meet attendance drop count for prior Hockey Season, the total drop count will be reviewed after 16 regular Hockey Season games of following Hockey Season.
 - Drop Count should be at 45% of total drop count requirement for that year
 - Failure to meet the above would grant option to the City to terminate the License at end of the then Hockey Season and playoffs.
 - In such event notice to terminate shall be given to Team 60 days prior to last regular Hockey Season game

5.3 **Governing Law.** This License shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflict of law rules. Exclusive venue for any action shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.4 **Entire Agreement.** This License represents the entire agreement of the Parties hereto concerning the subject matter thereof to date and supersedes all previous documentation, agreements and correspondence between them pertaining to the same subject matter.

5.5 **Successors.** This License shall inure to the benefit of and be binding upon the respective successors and permitted assigns of each of the Parties hereto.

5.6 **Notices.** Any notice required or permitted to be delivered hereunder shall sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or by courier or otherwise hand delivered and shall be deemed delivered on the date of actual receipt:

To City:

City of Allen
Attn: Peter H. Vargas, City Manager
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

To Team:

Allen Hockey Team LLC
Attn: Jack Gulati
700 Penn Street
Reading, Pennsylvania 19602

or such other address as such Party may from time to time designate by notice in writing to the other Parties.

5.7 **Force Majeure.** The performance of the respective Parties hereto and their respective obligations hereunder shall be subject to force majeure, including, but not limited to, insurrections, riots, wars and warlike operations, explosions, epidemics, strikes, shortages of supply, fires, accidents, acts of any public enemy or any similar occurrence beyond such Party's reasonable control, but the inability to make a monetary payment required by this License shall not of itself be an event of force majeure. Any Party temporarily excused from performance

hereunder by any such circumstance shall use its best efforts to avoid, remove or cure such circumstances and shall resume performance with the utmost dispatch when such circumstances cease to apply. Any Party claiming force majeure as a reason for delay in performance shall give prompt notice in writing thereof to the other Party or Parties.

5.8 **Survival.** Any of the representations, warranties, covenants and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following termination of this Agreement shall survive expiration or termination of this License.

5.9 **Recitals.** The recitals to this License are incorporated herein.

5.10 **Counterparts.** This License may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.11 **Exhibits.** Any exhibits to this License are incorporated herein by reference for all purposes wherever reference is made to the same.

5.12 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this License shall survive termination.

5.13 **Representations.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this License..

5.14 **Amendment.** This Agreement may only be amended by the mutual written agreement of the Parties. The City Manager is authorized to execute any amendment to this Agreement and any instruments related thereto.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley George, City Secretary

AGREED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this 3rd day of July, 2017.

ALLEN HOCKEY TEAM, LLC

By: _____
Jack Gulati, Manager

EXHIBIT "A"

Arena License Fees: for each exhibition, regular Hockey Season or play-off Game.

License Fee for each or Regular Season Game on a Friday or Saturday.

And all US Federal Holiday and Allen ISD Breaks.

Rent & Base Services:	\$6,000 (*with 3% escalator to cover staffing cost increases)
<u>Facility Fee:</u>	<u>\$4,000</u>
Total	\$10,000

License Fee for each Exhibition or Regular Season Game on a Sunday. Unless US Federal Holiday or Allen ISD Break.

Rent & Base Services:	\$4,000 (*with 3% escalator to cover staffing cost increases)
<u>Facility Fee:</u>	<u>\$4,000</u>
Total	\$8,000

License Fee for each Exhibition or Regular Season Game on a Monday – Thursday, Unless US Federal Holiday or Allen ISD Break.

Rent & Base Services:	\$3,500 (*with 3% escalator to cover staffing cost increases)
<u>Facility Fee:</u>	<u>\$4,000</u>
Total	\$7,500

License Fee for Play-off Games

Round	Game R&B	Game FF	Game Total
1	\$2,000	\$4,000	\$6,000
2	\$3,000	\$4,000	\$7,000
3	\$4,000	\$4,000	\$8,000
4	\$6,000	\$4,000	\$10,000

*3% escalator on \$6,000 Rent & Base Service amount to be applied following year three (3) of this Arena License and at three (3) year intervals if Term Renewal(s) apply. Escalator amount to be applied to all Rent & Base Services structures above.

EXHIBIT "B"
Base Level Service

- Base Game Conversion (set & strike)*
- Base Housekeeping (in-game & post game)
- Base Guest Services related to ticket taking / attendants / BOH*
- Base Audio/Visual (1 Technician for Usage Hours and Building AV inventory as is (9.10.2017)
 - Building AV inventory includes HD equipment. Team staff who use HD Cameras and Booth Equipment must complete approved building AV Operator training.
- Food and Beverage promotions, with no cost to team, limited to (2) regular Hockey Season game promotions per season agreed upon by Parties. Promotions to be used on games that fall on Monday through Thursday.
- Security
- Items above & beyond those determined as "Base" will be at the expense of the Team as set forth below

Base Game Conversion Includes:

- (2) Party Booths 10 x 16 (with tables and chairs on the North or South Concourse) *
- (2) Meeting Rooms (standard tables & chairs)
- (2) Glass/Field/Presidential Suites on Floor (12 people) *
- (1) Press Box (2 broadcast locations with connections) *
- (2) 4-hour use of building outside of games for special events
 - Set up not included
 - 2 event attendants will be provided
 - Event not to exceed 100 attendees
 - Written request stating use of option must be made minimum two weeks out
- (10) Kiosks Booths (4 on the South Concourse and 6 on the West Concourse) *
 - Includes table, chairs and backdrop. (Booths unoccupied at game time will be removed)
 - Additional booth available for purchase based on space availability
- (2) Merchant Booth (one located in corner adjacent to box office, second to be determined) *
- Arena with sports playing surface and retractable seats extended with exception of limits due to permanent dasher boards, benches, penalty box, etc.

*Covers normal and standard event and operations with no additional pre-game or post-game events or activities. Item is capped at rate under normal and standard event operations. Any additional items or services shall be charged at the then rates and fees established by the City, and paid by Team.

City acknowledges and agrees that as City is in control of and licensing the Facility to Team, City is responsible for providing the appropriate and necessary services for normal and standard event operations and security. Based upon Team's history with the City, City may in its sole discretion increase or decrease the Base Level of Services on an event-per-event basis; provided such change is set forth in writing approved by the Parties. Any approved change in the Base Level of Service shall only apply to the specific event.

EXHIBIT "C"
Revenue Sharing

Team shall be entitled to the following percentage of the Concession Revenue:

<u>Concessions</u>	<u>Drop 0-3,000</u>	<u>Drop 3,001+</u>
--------------------	---------------------	--------------------

- | | | |
|-------------------|-----|-----|
| • Concourse Level | 20% | 25% |
| • Premium Level | 5% | 5% |

*percentages based off net revenue (Gross Rev – Expenses – Tax = Net Revenue)

Team shall be entitled to the following percentage of Concession Revenue from Premium Seats:

- Designated Premium Seats – 5%
- (a) Attendance is defined by "Drop" Count from Facility Box Office reports
- (b) Revenue Sharing "Drop Count" as defined in Section 4.3 and Section 4.4

Team and City shall add a Two Dollar (\$2.00) Administrative Fee to all tickets sold for all Primary and Secondary Box Office outlets in addition to Ticketmaster minimums. This revenue shall be used to offset the \$4,000 Facility Fee paid in Arena License Fee / Exhibit "A".

- a) If total administrative fee collected per game is under \$4,000; Team and City will split the difference (Shortfall) in settlement to offset the \$4,000 Facility Fee.
- b) If total administrative fee collected for game is above \$4,000; Team and City will split the difference (Revenue Overage) in settlement above the \$4,000 Facility Fee.

Team shall be entitled to the following additional revenue if attendance benchmark is met:

- If Team exceeds a total scanned ticket Game Drop Count of 3,000 for a regular Hockey Season or Playoff game, Arena will credit team an additional \$5 per Premium Level seat at settlement of that game. 314 Suite Seats + 169 Loge Seats = 483 Seats Grand Total (483 x \$5 = \$2,415 Game Credit). Total Scanned Ticket Count includes both Premium Level and Bowl Seating.

In accordance with Article 2.7(o): Team shall be allowed to assist in selling, unsold and available, Arena Sponsorship Signage with the below guidelines:

- Americans assist in selling available Arena sponsorship signage
- When sold by team: City and Team will split Net Revenue from sponsorship sale evenly (50/50)
 - Taxes, Production and Commission will be first deducted from Gross Revenue

- Commission will be paid at 10% to Team Account Executive responsible for sale and 2% will be paid to City for service of the agreement.
- Deals must be approved by Arena, Signage creative and installation is above and beyond the asset pricing and the responsibility of sponsor, costs associated with removal of signage taken into consideration in large future expense (i.e. Metro PCS Garage Signage, etc.)

Non-Alcoholic Beverage Pouring Rights Support:

Arena awarded Non-Alcoholic Beverage Pouring Rights Exclusivity through Request for Qualifications (RFP) and Bid Process for Facility.

- RFP is only for Exclusive Pour Rights and Concession Rights and physical product presence in the Arena. *Teams can sell advertising or signage in the arena to other CSD suppliers as long as it isn't building inventory and product isn't brought into building.*
- *Due to Product Exclusivity, Building will share 125 cases of designated product with team to help accommodate BOH needs or in-game activity for Press Box, etc. through City's existing term of Pouring Rights Agreement.*

EXHIBIT "D"
Premium Seats

Premium Level Structure

Agreeable that the Premium Level sales and management is better set up in the traditional fashion of the Arena/City managing and selling the seat inventory. City will control the Premium Level Seat inventory.

- There is a total of 29 Premium Level Suites with 4 Suites off Manifest. Suite 209 (Naming Rights Suite); Suite 208 (MGH/Developer Suite); Suite 222 (City Suite); Suite 221 (Team Owners Suite)
- City will pay Team for 25 Suites each regular Hockey Season or Playoff game played at the Allen Event Center in the amount of \$222 per suite (\$5,550 per game) that will be handled during settlement.
- Team must request and be given approval from City to use, sell, leverage in trade, place in ticket packages or include in sponsorship any Premium Level seat inventory. If given approval by City, Team must purchase seats at a mutually agreeable and reasonable rate. Exception will be Suite 221 (Team Ownership Suite) and Suites 201/202 (North Party Suite) which seat inventory is provided to Team as complimentary.

The 2 "Glass Party Suites" located at bowl level on west end of arena are considered bowl seating inventory and will remain Team inventory. Future approved bowl level suites would be considered team inventory, construction at the expense of team, and must meet codes and safety regulations.

EXHIBIT "E"
Food and Beverage

Specials

Dates and content of food and beverage specials shall be determined and agreed to by the Parties at least 45 days prior to the Team's first home game during the Hockey Season.

Special items sold at a discount for promotional purposes are non-commissionable.

Cancellation of food special or promotion less than two (2) weeks out will result in forfeit of City provided promotion is applicable.

Number of Concession locations

The number and placement of Concession locations for food and beverage during the Applicable Usage Hours shall be at the sole discretion of the City. Standard amount of Concession locations for a sporting event consists of 4 fixed Concession locations and additional portables as determined by the City. Any additional Concession locations or portables requested by the Team are not covered by the Base Service Level.

Meal Vouchers

Food and beverage voucher/coupon offerings and pricing shall be agreed to by the Parties at least 45 days prior to the Team's first home game during the Hockey Season. Coupon/voucher sales are restricted to groups of 10 or more and are valid only for the specific event. City shall honor only City approved coupons/vouchers. City approved food and beverage coupons/vouchers may be redeemed for food and beverage at the Concessions at the face value thereof by patrons without change back. Team shall pay to City the face value of all food and beverage coupon/vouchers redeemed by patrons at the Facility at the settlement following each exhibition, game or play-off game as the case may be. Team is responsible for the payment of any counterfeit coupons/vouchers redeemed by its patrons. The quantity of coupon/ voucher sales shall be reported to City 48 hours prior to scheduled event to facilitate efficient distribution of food and beverage.

Team Cash Coupons

Team cash coupon shall be agreed to by the Parties at least 45 days prior to the Team's first home game during the Hockey Season. Only City approved Team cash coupons may be redeemed for food and beverage at the Concessions at the face value thereof by patrons without change back. Team shall pay to City the face value of all Team Cash coupons redeemed by patrons at the Facility at the settlement following each exhibition, game or play-off game as the case may be. Team is responsible for the payment of any counterfeit Team cash coupons redeemed by its patrons. The quantity of Team cash coupons shall be reported to City 48 hours prior to scheduled event.

Sampling

Food or Beverage sampling may be conducted by Team sponsors at locations determined by City and only after approval by the City Director of Food and Beverage prior to the applicable event.

Fundraiser Sales

Any food or beverage fundraising sales conducted by organizations shall be approved by the Director of Food and Beverage prior to event and shall be at such locations approved by the Director.

VIP Bars

The request for VIP bars shall be submitted 72 hour prior to the event and will be honored subject to availability. Team shall pay the costs and charges for VIP Bars at the then current rates established by the City and paid at the settlement following the applicable event.

Team agrees to adhere to Building F&B policies, including but not limited to:

Allen Event Center Serving Ice Policy

In order to protect the sanitary standards that Allen Event Center works to maintain, the following policies are set forth to confirm a general understanding of AEC procedures.

The Allen Health Department is the local agency that regulates all phases of the health and sanitary regulations in Allen Texas. The Event Center policy is in place to support and adhere to the regulations put in place by the Allen Health Department and ensures all user groups (Teams, Licensees, Vendors, etc.) have a general understanding of limitations and standards.

1. TEAMS/LICENSEE/VENDORS **are NOT permitted** access to the kitchen or F&B back of the house areas.
 - a. Ice will be bagged and made available to Teams or Licensee.
 - b. If ice is needed for an event, pre orders must be arranged with the Food & Beverage department at least 24 hours in advance of the event.
 - c. Ten (10) – 20 pound bags of ice will be supplied to the Team/Licensee/Vendors at no cost.
 - d. Additional bags will be charged at seven dollars (\$7) per 20 pound bag.
 - e. Team members, interns and 3rd party vendors are prohibited from entering the kitchen or back of the house serving areas. These are food preparatory areas and sanitary standards must be preserved.
 - f. The present user of the facility on any particular day will have discretion on the distribution of allotted ice bags and usage of machine ice.

Allen Event Center Outside Food & Beverage Policy

In order to protect the investment of capital and labor of all vendors and Allen Event Center (AEC) Food and Beverage division, the following policies are set forth to confirm a general understanding of AEC procedures.

The Texas Alcoholic Beverage Commission (TABC) is the state agency that regulates all phases of the alcoholic beverage industry in Texas. The duties of the commission include regulating sales, taxation, importation, manufacturing, transporting, and advertising of alcoholic beverages. The below Event Center policy is in place to support the regulations put in place by the TABC and ensure all user groups (Teams, Licensees, Vendors, etc.) have a general understanding of limitations and standards.

1. TEAMS/LICENSEE **are permitted to** bring in non-building sponsor non-alcoholic beverage and food for home/visiting team post game meals or staff use.
 - a. Items must not leave the back of house area and be used in this area only.
 - b. Items must be delivered BOH at Command and will not be allowed into the building at any other location.
 - c. Items are not to be in Public view
2. TEAMS/LICENSEE **are NOT permitted to** bring outside vendor food into the owners suite or FOH areas.
 - a. FOH or Premium Level food must be purchased through building F&B Division and can be selected from a concessionaire currently operating in the building or the AEC F&B Division. Exceptions must be approved in writing 15 days in advance from AEC F&B Director, Assistant General Manager or General Manager.
3. TEAMS/LICENSEE **are NOT permitted to** bring outside alcohol into AEC.
 - a. Teams/Licensee **cannot under any circumstances** bring outside alcoholic beverages into AEC pursuant to TABC regulation (Sec. 28.06). Alcohol served on the permitted premises must be purchased by License holder. License holder must hold an invoice as proof of purchase.
4. TEAMS/LICENSEE **are NOT permitted** to bring donated alcohol, supplies or equipment into AEC.
 - a. Teams **cannot** bring in any supplies or equipment that is donated by a beer or spirits distributor pursuant to TABC regulation (Sec. 102.07).
5. TEAMS/LICENSEE **are NOT permitted to** sell Alcoholic beverages.
 - a. Alcohol is prohibited from being sold by anyone other than AEC personnel or agents thereof on AEC property licensed by the TABC.

6. Approved Third party vendors must possess City of Allen Health Department Certificate for respective event.
 - a. A health certificate must be obtained from the City of Allen Health Department prior to operating any food and beverage site on AEC property.
7. All 3rd Party Food & Beverage vendors must be approved by AEC Director of Food and Beverage
 - a. Submission of menu, sample of proposed product and pricing must be presented to AEC Director of Food and Beverage for approval prior to permission being granted to sell at AEC.
 - b. Required payment by 3rd Party vendors.
 - c. Negotiated payment or buyout must be received from vendors selling Food and Beverage products on AEC property.
8. AEC has absolute authority to select what food and beverage can be served on AEC property. All approved vendors must adhere to all local, state and federal laws.
9. Sampling and the portion size will be considered for approval by AEC Director of Food & Beverage on an event by event basis.
10. Teams / Licensee are permitted to use AEC Third Party Concession Vendors or AEC Restaurant Partners specific for catering purposes, but NOT FOR RESALE, in the below areas with approval from AEC Director of Food & Beverage:
 - a. Press Box Media, for the purpose of hosting league and media officials
 - b. Back of house Team Locker Rooms, Team Hallways and Team Offices. Not to be brought into public areas.

EXHIBIT "F"
Playoff Priority Scheduling

Playoff Priority Scheduling

- City and Team will work together to ensure priority dates during playoffs.
- City will book additional events but will ensure team has option of "two of three" days that fall Friday-Sunday.
 - One block in late May or early June will be the exception, typically the first weekend (Thursday through Saturday) due to long standing community graduations.
 - City will provide Team with dates held for ECHL Playoffs that support the "two of three" commitment for playoffs. Held dates to be communicated to Team not later than February 15 of each year.
 - City will continue to book venue to ensure a variety of programming to the residents of Allen and North Texas. If one of the bookings conflicts with hold playoff date for team, building will work with Team on determining reasonable revenue share of alternate event. Date will be Teams to release or hold once provided to Team.

EXHIBIT "G"
Team Marketing Plan and Sales Staff

It is understood that Team longevity is directly tied to attendance levels with Arena License Agreement structure being that Team and City both need strong hockey attendance to have successful business seasons. To ensure that appropriate efforts are being made:

- Team shall provide a Marketing and Sales plan to City by September 1 of each year.
- Team shall maintain appropriate staffing levels to execute presented plan and service season ticket holders and fans.
- Team shall successfully execute core elements of provided Marketing and Sales plan each season.

If above is successful accomplished:

- City will provide team for upcoming season "**Additional Office Space**", as referenced in Article II, Section (b), to house 4-6 sales staff at no additional Arena License Fee to Team.

Notice To Cure:

If Team fails to provide the requirements listed above the City will provide a Notice To Cure in accordance with this License Agreement. Failure to perform the above will not be an Event of Default but would allow the City to revoke "**Additional Office Space**" usage if City sees fit.