

# Event Center License\_ Agreement

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Fishers Town Hall Building Corporation - City of Fishers -  
Indiana Hockey Club, LLC

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This EVENT CENTER LICENSE AGREEMENT (this “**Agreement**”) is entered into this \_\_\_\_\_ day of May, 2023 (the “**Effective Date**”) by and among the Fishers Town Hall Building Corporation, an Indiana nonprofit corporation (“**THBC**”), City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation (“**City**”), and the Indiana Hockey Club, LLC, an Indiana limited liability company (“**IHC**”).

## **Recitals**

WHEREAS, City has undertaken the construction of the Event Center, which will be generally located Southeast of the USA Parkway and Ikea Way Roundabout in Fishers, Indiana, as further depicted on Exhibit A, attached hereto and incorporated herein (the “**Real Estate**”), for the benefit of Fishers, Indiana citizens and Indiana families to provide athletic contests and other types of entertainment, performances, and events that contribute to the educational, recreational, economic, and cultural development of the community (the “**Municipal Purposes**”);

WHEREAS, City is a party to this Agreement for the exclusive purposes of (a) causing the construction of the Event Center, (b) upon substantial completion, transferring and conveying the Event Center to THBC which will own, operate, and provide licenses for use of the Event Center, and (c) compensating Hallett for the Ambassador Services;

WHEREAS, IHC owns and operates a professional hockey team (such team and any successor to, or assignee of, such team, the “**Team**”) in the League;

WHEREAS, to accomplish the Municipal Purposes, THBC has committed to hold athletic competitions in the Event Center; and

WHEREAS, IHC desires to use the Facilities, including, without limitation, for the purpose of conducting Hockey Events and holding Team training and practices, and other reasonably related uses.

NOW THEREFORE, in consideration of the covenants and agreements herein expressed and of the faithful performance of all such covenants and agreements, City, THBC and IHC hereby agree as follows:

### **Article 1. Defined Terms**

“Agreement” has the meaning set forth in the preamble.

“Ambassador Period” has the meaning set forth in Section 3.04.

“Ambassador Services” has the meaning set forth in Section 3.04.

“Andretti Suite” has the meaning set forth in Section 10.11.

“APRA” has the meaning set forth in Section 27.01.

“Average Ticket Price” means the average ticket price realized by IHC for the Hockey Season immediately preceding the date of determination and shall be based on the average ticket price of all Regular Season Game tickets sold during that season, net of the Facility Fee. The

amount of the Average Ticket Price may increase or decrease from year to year and shall be determinatively established as the amount reported by IHC to the League each year. The calculation of Average Ticket Price shall include discounted tickets, including ticket plans and group tickets, but shall not include complimentary tickets. For example purposes only, the Average Ticket Price for the 2021-2022 Hockey Season was \$28.35.

“Beverage Sponsorships” has the meaning set forth in Section 9.02.

“City” has the meaning set forth in the preamble.

“Claims” shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys’ fees); provided that in no event shall Claims include consequential or punitive damages.

“Common Areas” means those areas within and about the Event Center and Real Estate that are held open for public use, including, without limitation, the Parking Facility, hallways, stairwells, elevators, entryways and sidewalks.

“Confidential Information” has the meaning set forth in Section 27.01.

“Contract Year” means the period from September 1 from one calendar year to August 31 of the subsequent calendar year, except for the first Contract Year, which shall begin on the Effective Date and continue until August 31, 2025.

“Effective Date” has the meaning set forth in the preamble.

“Electronic Marquee” means the large digital signage affixed to outside of the Event Center.

“Electronic Signage” means (a) the Electronic Marquee, and (b) scoreboard video, ribbon board messages and all other digital messages displayed inside the Event Center, including without limitation TV Messages.

“Event Center” the Event Center building located on the Real Estate.

“Excluded Activit(ies)” has the meaning set forth in Section 10.17.

“Facilities” means, individually or collectively, (a) the entirety of the Event Center, including but not limited to the seating and access thereto, the playing surface, Team Locker Room, Visiting Team Facilities, the Team store and Common Areas; provided that “Facilities” shall not include those areas that are not directly related to Hockey Events, including, without limitation, kitchen facilities, designated spaces like offices that are not specifically provided for IHC’s uses, boiler rooms and other areas reasonably deemed private by THBC; and (b) other areas of the Event Center and/or Real Estate as may be designated or approved from time to time at the commercially reasonable discretion of THBC for IHC’s use.

“Facility Fee” has the meaning set forth in Section 10.01.

“Force Majeure” means any event beyond the reasonable control of the party affected (or

any employee, representative, agent or independent contractor of the party affected) that prevents or delays such party's performance of its obligations (other than its obligations to make payments of money) under this Agreement, including strikes, lockouts, work stoppages, labor unrest, transportation stoppages, riots, wars, terrorism, acts of military authorities, national or state emergencies, floods, fires, earthquakes, tornadoes or acts of God, including without limitation pandemics, epidemics or shelter-in-place orders

“Goodwill Obligation” means the obligation of IHC and THBC not to (a) contract with or otherwise enter into an agreement with a person or entity regarding the Event Center, or (b) use the Event Center, in both cases of (a) and (b) immediately above, in a manner that will materially injure or damage the reputation and goodwill of IHC or THBC, as applicable.

“Hallett” means James P. Hallett in his individual capacity for purposes of providing the Ambassador Services as more fully set forth herein.

“Hockey Equipment” has the meaning set forth in Section 6.01.

“Hockey Event(s)” means, individually or collectively, Home Games together with pre-game and post-game events, festivities, activities and set-up occurring on the same day as Home Games, which Hockey Events shall typically occur within a six (6) hour period (the “**Hockey Designated Time**”), unless otherwise agreed by THBC.

“Hockey Season” means, subject to adjustment by the League, (a) the period from approximately October 1 to April 30 each Contract Year of this Agreement, and (b) if the Team plays in the post-season, the Postseason Period of each Contract Year of this Agreement.

“Home Game(s)” means any Pre-Season Game, Regular Season Game or Play-Off Game scheduled by the League and/or IHC to be played as a home game during the Term of this Agreement.

“IHC” has the meaning set forth in the preamble.

“IHC IP” has the meaning set forth in Section 12.03.

“IHC Promotions” means agreements for promotional activities during Hockey Events such as audio, advertisements, announcements, videos, displays, kiosks or tables inside or upon the large digital sign affixed to the Event Center, or, upon prior written approval of THBC, other areas outside the Event Center.

“Initial Term” has the meaning set forth in Section 18.01.

“Interior Naming Rights” means the naming rights pertaining to the Sponsorship of the 1<sup>st</sup> floor event level club section, 2<sup>nd</sup> floor bar club section, 2<sup>nd</sup> floor loge club section and other areas mutually determined by the parties.

“Laws” means all applicable federal, state and local statutes, ordinances, laws, rules, regulations, covenants and declarations, including but not limited to those relating to the environment, safety, security, occupancy, sanitary, and health requirements, fire and safety codes

and use of the Event Center.

“League” means the ECHL hockey league, its successor, or any other professional hockey league to which the Team may participate, including without limitation, the American Hockey League.

“License Fee” has the meaning set forth in Section 20.01.

“Locker Room Budget” has the meaning set forth in Section 5.04.

“Manager” means ASM Global Arena Management LLC, a Delaware limited liability company, or any successor appointed by THBC to serve as Manager.

“Mediation Deadline” has the meaning set forth in Section 33.01.

“Merchandise” has the meaning set forth in Section 12.01.

“Municipal Purposes” has the meaning set forth in the recitals.

“Naming Rights Package” means the right of a third party to have its name placed prominently on the exterior of the Event Center, other locations on the outside and inside of the Event Center, all as agreed to by and among IHC, THBC and such third party.

“Naming Rights Sponsor” means the third party (which may change from time to time) who acquires the Naming Rights Package.

“Other Event(s)” means any event occurring at the Event Center or Real Estate that is not a Hockey Event.

“Other Event Promotions” means agreements for promotional activities occurring at times other than during Hockey Events such as audio, advertisements, announcements, videos, displays, kiosks or tables inside or outside the Event Center and on the large digital sign affixed to the Event Center.

“Parking Facility” means that certain parking property or properties generally located at and about the Event Center that shall be made available during Hockey Events, for a charge, to park automotive transportation.

“Permanent Signage” means signs with printed content affixed in a permanent manner inside the Event Center.

“Play-Off Game(s)” means any one of a series of Team home hockey games scheduled by the League to occur after the close of a Regular Hockey Season during the Postseason Period to determine the ultimate champion of the League for such season.

“Postseason Period” means, subject to change by the League, generally the months May, June and July.

“Pre-Season Games” means any Team home hockey game, except intra-squad games, played by IHC prior to the first Regular Season Game during each Hockey Season.

“Premium Seating” means manifested seats (including bar stools) in the Event Center with respect to suites, loge seating, and/or club seats for all Hockey Events and Other Events at the Event Center for which tickets are sold. “**Premium Seating**” shall also include any tickets a suite holder may purchase in addition to their manifested seats (e.g., standing room only tickets).

“Real Estate” has the meaning set forth in the recitals.

“Regular Hockey Season” means the period from the opening of the Regular Season Games to and including the last regularly scheduled Regular Season Game as set forth in each annual schedule established by the League, but exclusive of any Pre-Season Games and Play-Off Games.

“Regular Season Games” means each hockey game played by the Team as part of the Regular Hockey Season.

“Required Changes” has the meaning set forth in Section 5.06.

“Signage” means collectively (a) Permanent Signage, (b) Temporary Signage, and (c) Electronic Signage.

“Signage Fulfillment” has the meaning set forth in Section 13.10.

“Sponsorships” means written agreements between IHC and third parties for (a) Signage, (b) the Naming Rights Package, (c) Interior Naming Rights, (d) IHC Promotions, and (e) Beverage Sponsorships, all of which shall be entered into in compliance with the Goodwill Obligation.

“Suite Fair Market Value” has the meaning set forth in Section 10.11.

“Team” has the meaning set forth in the recitals.

“Team Locker Room” shall mean the area depicted on Exhibit A, including, without limitation, the showers, toilets, coach’s office, equipment room and trainer’s room located therein.

“Temporary Signage” means printed content on banners and flags of a fireproof material placed inside the Event Center.

“Term” has the meaning set forth in Section 18.01.

“THBC” has the meaning set forth in the preamble.

“THBC Insured Parties” has the meaning set forth in Section 23.01(a).

“THBC IP” has the meaning set forth in Section 12.03.

“Training Equipment” has the meaning set forth in Section 5.04.

“TV Messages” means video and audio messages on the TVs located throughout the Event Center.

“VIP Areas” means those areas designated by IHC and THBC as hospitality areas within the Facilities.

“Visiting Team Facilities” has the meaning set forth in Section 5.05.

## **Article 2. Purpose & Scope**

Section 2.01 Occupying the Facilities. IHC shall be granted and shall have during the Term the right and license to use and occupy the Facilities in accordance with this Agreement. Except as set forth in Section 2.04, nothing in this Agreement shall be construed to permit IHC to use the Facilities for uses other than Hockey Events without THBC’s prior written consent; provided, however, subject to Section 5.04, IHC shall be entitled to full use of the Team Locker Room and the Team store throughout the Term notwithstanding the occurrence of a Hockey Event.

Section 2.02 No Conflict. IHC’s use of the Facilities pursuant to this Agreement and THBC’s use of the Event Center and Real Estate in all other respects shall be conducted in such a way to minimize conflict with the other party’s revenue generating activities and, in the case of THBC, the Municipal Purposes; provided, however, THBC acknowledges and agrees that Hockey Events will not conflict with the Municipal Purposes.

Section 2.03 Approval of Certain Events. Any (a) public ice skating (which shall not include private events), or (b) non-IHC hockey games where spectators are charged to attend the event (e.g., youth hockey, USA Hockey, ISHSHA hockey, and NCAA hockey), must be first approved by IHC, in its sole discretion. IHC hereby approves any non-professional, K-12 hockey games.

Section 2.04 Survival of Terms. All rights and obligations created under the terms and conditions of this Agreement shall not extend beyond the Term except to the extent necessary to preserve the intent of the parties, including, without limitation, the rights and obligations of the parties in the following provisions: Article 23 (Insurance) and Article 24 (Indemnification & Defense).

Section 2.05 No Ownership Rights. Anything herein to the contrary notwithstanding and without limiting IHC’s rights under this Agreement, IHC shall not acquire any ownership property rights whatsoever in:

- (a) the Event Center or Real Estate; or
- (b) any equipment, furniture, fixtures or other improvements inside or outside the Event Center, including, without limitation, equipment used to display Signage and advertising.

## **Article 3. Covenants**

Section 3.01 Good Standing. During the Term, IHC shall maintain its membership in good

standing with the League. For purposes of clarity, IHC may in its sole discretion (a) move the Team from time to time to a League that is different from the League in which it then currently competes, or (b) replace the Team with a different hockey team that participates in the League or any League that is different from the League in which it then currently competes; provided any such new League in which the Team or its successor participates is either (x) a successor to the League in which the Team then currently competes and is reasonably equivalent in terms of the level of hockey competition, or (y) is a League that is equal to or higher in quality of hockey than that in which the Team then currently competes. If IHC ceases to be a member in a League, this Agreement shall terminate, and, unless IHC has filed for bankruptcy, IHC shall be exclusively liable for the continued payment of the License Fee, which License Fee shall continue to be paid pursuant to Article 20 and for any obligations pursuant to provisions of this Agreement that by their express terms or nature survive termination.

**Section 3.02 THBC Compliance.** THBC shall comply in all material respects with the Laws. THBC shall not enter into any agreements which would materially and adversely affect IHC's right to use the Facilities for the Hockey Events during the Term.

**Section 3.03 IHC Compliance.** IHC shall comply in all material respects with the Laws. IHC shall, at its sole cost and expense, obtain all permits and licenses (e.g., pyrotechnics) necessary to legally hold Hockey Events, and shall provide copies of same to THBC prior to the date of any such Hockey Event requiring a permit or license. Provided that THBC does not believe, in its commercially reasonable discretion, that the activity subject to such permit will cause personal injury, property damage, increase insurance premiums or alter the Event Center or Real Estate, THBC agrees to reasonably cooperate with IHC in its efforts to obtain the same, and shall not actively oppose the grant of the same.

**Section 3.04 Ambassador Services.** During the period commencing on the Effective Date and ending sixty (60) months thereafter (the "**Ambassador Period**"), IHC shall cause Hallett, for so long as he is reasonably able, to provide the services set forth on Exhibit B (the "**Ambassador Services**"). In consideration for providing the Ambassador Services, City shall pay Hallett \$7,500 for each month during the Ambassador Period during which Hallett provides Ambassador Services. Payments shall commence on May 1, 2023, with monthly payments due on the first business day of each month thereafter. The Ambassador Period may be extended for additional successive one-year terms by mutual written agreement of Hallett and City prior to the expiration of the then-current Ambassador Period. City shall reimburse Hallett for any reasonable, out-of-pocket costs and expenses approved by City with respect to (a) out of town travel and meetings on behalf of City and/or the Event Center, and/or (b) in town meetings involving meals and beverages. Except for the foregoing, City shall have no obligation to reimburse Hallett for any out-of-pocket expenses incurred by Hallett relating to the Ambassador Services. Notwithstanding anything in this Section 3.04 to the contrary, IHC may terminate its obligation to cause Hallett to provide the Ambassador Services by providing thirty (30) days' written notice to THBC and the parties agree and acknowledge that such termination shall not effect or modify any other provision of this Agreement or any rights of IHC hereunder.

## **Article 4. Scheduling**

Section 4.01 Scheduling of Other Events. Except as otherwise provided in this Agreement, THBC reserves the right to schedule the dates and times of use of the Event Center with respect to Other Events in its sole and absolute discretion.

Section 4.02 Hockey Events - Regular Season Games. No later than November 25 of each Contract Year commencing with November 25, 2023, THBC shall furnish at least seventy-two (72) dates and times when Regular Season Games may be played during the immediately following Hockey Season and hold those dates open for IHC. At least seventy-five percent (75%) of those dates shall be Friday or Saturday evenings. Within the earlier of (a) thirty (30) days after the League schedule of Regular Season Games is released by the League, or (b) two (2) business days after IHC reasonably has notice that a date will not be used for a Home Game, IHC shall notify THBC in writing of the (y) dates of Home Games to be played at the Event Center, or (z) in the instance described in subsection (b) above, the date(s) not required for Home Game(s). All such scheduled dates for Regular Season Games shall be reserved for IHC, provided that such dates are consistent with the tentative dates originally provided to THBC pursuant to this Section 4.02. All other tentative dates held for use for Regular Season Games shall no longer be held for IHC and will become available for use for Other Events.

Section 4.03 Pre-Season Scheduling. The parties acknowledge and agree that (a) Pre-Season Games are not scheduled by the League and it will not be possible to ascertain the desired dates for such Pre-Season Games until near the beginning of each Regular Hockey Season, and (b) the parties will timely work, mutually and in good faith, to assist and cooperate with each other to schedule dates (if any) for Pre-Season Games; provided that Pre-Season Games may only be scheduled during dates and times in which the Event Center is available.

Section 4.04 Postseason Scheduling. The parties acknowledge and agree that (a) Play-Off Games may occur from year to year during the Postseason Period depending on the success of the Team during the Regular Hockey Season, (b) it will not be possible to ascertain whether dates will be required by the Team for Play-Off Games until near the end of each Regular Hockey Season, and (c) the parties will timely work, mutually and in good faith, to assist and cooperate with each other in order to schedule dates for Play-Off Games. For each Contract Year, THBC will reserve at least fifty percent (50%) of all available weekends in the Postseason Period for Play-Off Games. All such reserved weekends shall include (y) an immediately succeeding Friday, Saturday and Sunday, and (z)(i) an immediately succeeding Monday, Tuesday and Wednesday, or (ii) an immediately preceding Wednesday and Thursday. Weekends reserved for Play-Off Games shall be evenly disbursed throughout the Postseason Period with no more than ten (10) days in between reserved dates.

Section 4.05 Release of Dates. Within five (5) business days after preparation of the League schedule for each round of Play-Off Games in which IHC participates, IHC shall notify THBC in writing of the dates scheduled for the playing of Play-Off Games in such play-off round, and other tentative dates through the end of such round shall be released and shall become available for use for Other Events that may be scheduled for the Event Center. As soon as it is reasonably clear that IHC will not play in Play-Off Games in any Hockey Season, such tentative dates reserved pursuant to Section 4.04 shall be released and shall become available for use by THBC. IHC and THBC agree to consult and reasonably cooperate to resolve any conflicts or disputes arising from the scheduling of Play-Off Games.

Section 4.06 Cancellations. IHC shall give THBC prompt notice of any Home Game cancellations or other schedule changes. In the event a game is cancelled or postponed, IHC and THBC shall work together in good faith to reschedule the cancelled or postponed game to another date.

Section 4.07 Release of Events. In the event of a strike, work stoppage, League shutdown, or similar event which prevents IHC from playing hockey or otherwise presenting Hockey Events, IHC shall release Hockey Event dates to THBC once it is determined by IHC that IHC will be unable to hold a Hockey Event on such date.

Section 4.08 Use of Ice Surface. IHC shall have use of the ice surface at the Event Center for at least one hour before and after each Home Game. On the day before a Hockey Event, to the extent reasonably available, IHC and the visiting hockey team shall have use of the ice surface at the Event Center from 9:00 AM ET to 2:00 PM ET.

## **Article 5. Facilities**

Section 5.01 THBC Access. Subject to IHC's rights under this Agreement, THBC shall retain the right to control, manage, schedule, and operate the Real Estate, including the Facilities. When accompanied by IHC's designee, THBC's designee may enter the Team Locker Room and Team store at reasonable times, provided that an IHC designee shall not be required to be present in the case of an emergency requiring prompt action by THBC.

Section 5.02 Hockey Events. During Hockey Events scheduled pursuant to this Agreement, IHC shall have use of the Facilities for such Hockey Events, including, without limitation, use of VIP Areas, space for pre-game and post-game hospitality events, the Visiting Team Facilities, referee locker room, and press room, as depicted in Exhibit A to this Agreement.

Section 5.03 VIP Areas. During Hockey Events, IHC shall have the use of VIP Areas and other space within the Facilities for pre-game and post-game hospitality events occurring within the Hockey Designated Time.

Section 5.04 IHC Exclusive Use Areas; IHC Kiosks. Throughout the Term, IHC shall have the exclusive use of the Team Locker Room and Team store, which Team store may be closed by THBC during certain other activities. IHC may install, at its sole option, a whirlpool, exercise/weight training and other athletic and/or hockey equipment in the Team Locker Room (the "**Training Equipment**"), and THBC shall furnish the remainder of the Team Locker Room as a standard locker room subject to the budget approved by THBC and IHC for such Team Locker Room (the "**Locker Room Budget**"). Any cost to furnish the Team Locker Room greater than the Locker Room Budget, shall be the liability of IHC. IHC shall additionally maintain in good working order the Training Equipment or cause the Training Equipment to be removed from the Team Locker Room. IHC shall furnish the Team store subject to THBC's prior approval and fixtures shall become the property of THBC upon the termination of this Agreement or expiration of the Term. IHC may also maintain kiosks and tables for products sales/promotions during Hockey Events and all other activities, as more fully set forth in this Agreement; provided, however, during Other Events, IHC (a) may only maintain kiosks to promote Home Games and/or the Team, and (b) shall, at all times, be liable for its kiosks,

notwithstanding any other provision of this Agreement.

Section 5.05 Visiting Team Facilities. During Hockey Events, IHC shall have exclusive use of the visiting team locker room, showers and toilets (the “**Visiting Team Facilities**”) and, if the Visiting Team Facilities are not being used for an Other Event, the Visiting Team Facilities shall be available to IHC and its designees one (1) day prior to such Hockey Event.

Section 5.06 Maintenance - Premises Generally & Common Areas. THBC shall use diligent efforts to ensure that (a) the Event Center and Real Estate remain in compliance with the Laws, (b) are clean and in good operating condition, ordinary wear and tear excepted for a building of this type used for the intended uses, including for League professional hockey exhibitions. Without limiting the foregoing, THBC covenants and agrees that it shall carry out regular maintenance of the Event Center, including all necessary cleaning and repairs, except as otherwise provided in this Agreement. THBC shall be responsible for the cost of any improvements or changes (subject to prior IHC approval) to the Event Center resulting from or by reason of any change in League requirements concerning player or fan (invitee) safety, digital connectivity or fair play that, individually, do not exceed \$50,000 (individually or collectively, “**Required Changes**”). IHC shall be responsible for all other cost of any improvements or changes to the Event Center resulting from or by reason of any change in League requirements that do not constitute Required Changes. Moreover, except as otherwise stated herein, IHC shall be responsible for the cost of any improvements or changes (subject to prior THBC approval) to the Event Center (a) necessitated by any act or neglect of IHC, the Team, or any visiting hockey team and/or (b) resulting from or by reason of any other invitee of IHC or the Team, except paying ticket holders and except for such ordinary repairs which are caused by normal hockey team play. Moreover, THBC shall keep and maintain all Common Areas in a clean, open and safe condition consistent with the Laws. IHC will not impair or impede use of the Common Areas around or within the Event Center and shall otherwise position its tables and kiosks in compliance with the Laws.

## **Article 6. Equipment**

Section 6.01 THBC Equipment. THBC shall provide the use of and maintain in good working order the following equipment (individually or collectively, the “**Hockey Equipment**”):

- (a) Public address sound system;
- (b) Ice making equipment;
- (c) Dasher boards;
- (d) Protective glass (e.g., Plexiglas), goals, and penalty box;
- (e) Netting on both ends of the hockey rink in the Event Center;
- (f) Officials’ areas;
- (g) Goals, goal nets, netting, and judge lights;
- (h) Two (2) Zambonis;

- (i) Scoreboard (and any other scoreboard later installed, as applicable);
- (j) Ancillary hockey equipment customarily provided in other League home arenas;
- (k) Seating areas;
- (l) Secure internet connection for the Team store, Team Locker Room and visiting team locker room; and
- (m) Secure video feed for Team Locker Room and visiting team locker room.

Section 6.02 THBC Repair Obligation. THBC shall be responsible for normal wear and tear, damage, casualty losses, replacement, and other impairments of the Hockey Equipment, provided that IHC shall be responsible for (a) damage to the protective glass during Hockey Events (excluding for purposes of clarity normal wear and tear) and (b) damage to the Hockey Equipment caused by the Team or the visiting team (excluding for purposes of clarity normal wear and tear).

Section 6.03 League Standards. The Hockey Equipment listed at Section 6.01(c), (d), (e) and (g) shall meet League standards and customary levels as communicated in writing by IHC.

Section 6.04 Ice Surface Maintenance. For Home Games, THBC shall provide and maintain an ice surface that meets League standards and customary levels.

Section 6.05 In-Ice Signage. IHC shall pay all costs associated with in-ice signage; provided that, when THBC removes ice during the Hockey Season, THBC shall pay all costs associated with replacing in-ice signage, unless removed at the request of IHC.

Section 6.06 Abandoned Property. Forty-Five (45) calendar days after the termination or expiration of this Agreement, any property left in the Event Center by IHC, including, without limitation in the Team Locker Room, Team store and other areas, shall become property of THBC to be utilized or disposed of at THBC's discretion. IHC shall be responsible for any reasonable out-of-pocket disposal costs, which amounts shall be paid to THBC within thirty (30) days of THBC providing an invoice for any such expenses. This Section 6.06 shall survive termination of this Agreement.

## **Article 7. Crowd Behavior**

Section 7.01 Ejection of Invitees. THBC reserves the right to eject any unruly or disruptive person from the Event Center. THBC shall use best efforts to remove or reject any such person in a manner that is as minimally disruptive as possible under the circumstances.

## **Article 8. Personnel, Responsibilities & Coordination**

Section 8.01 Cooperation. IHC and THBC will work jointly to provide a quality entertainment experience with respect to the Event Center. THBC has initially retained the Manager to manage and operate the Event Center, and IHC and representatives of the Manager shall regularly meet to discuss operation of the Event Center with respect to Hockey Events. Upon reasonable

request of IHC, THBC shall make available THBC representatives to meet concerning IHC's use of the Event Center.

Section 8.02 Employees and Contractors. IHC and THBC will pay their respective employees and contractors without any expectation of reimbursement from the other party.

Section 8.03 THBC Year-Round Employees and Contractors. Throughout the Term during normal business hours, THBC shall provide employees and contractors for:

- (a) Ticket management, ticket sales at the Event Center box office, and customary box office services;
- (b) Housekeeping/janitorial and building maintenance services in the Event Center; and
- (c) Security as customarily provided with respect to the Event Center.

Additionally, THBC shall provide sixty (60) reserved parking spaces in the area depicted on Exhibit A for IHC employees and personnel.

Section 8.04 THBC Employees and Contractors. During Hockey Events, THBC shall provide employees and contractors for:

- (a) Ticket sellers in the Event Center box office (to the extent IHC utilizes the Event Center's contracted, exclusive automated ticketing partner for the sale of all individual tickets for the sellable capacity for all Hockey Events and Other Events via any and all means and methods, including on the Internet, by telephone, computer, IVR, outlets, television, clubs, auctions, VIP packages, presales, upsells, or by any other means of distribution, whether existing now or at any time in the future), ticket takers, parking attendants, concessionaires, ushers, and security inside and outside the Event Center to meet reasonable League standards;
- (b) Ice surface maintenance, set-up, and take-down to meet reasonable League standards;
- (c) Pre-game and post-game housekeeping/janitorial to meet reasonable League standards;
- (d) Medical personnel (and ambulance) for spectators/guests and at least two (2) AED units to meet reasonable League standards; and
- (e) Lighting and sound technician personnel, provided that IHC shall reimburse THBC for its actual costs incurred.

Section 8.05 IHC Year Round Employees and Contractors. Throughout the Term, IHC shall provide employees and contractors for:

- (a) Its professional hockey and business operations;
- (b) Sales, marketing, and creative services;

- (c) Inventory maintenance and staffing for the Team store;
- (d) Accounting and bookkeeping, as needed; and
- (e) Ticket sellers, concierge and other service providers necessary for a VIP experience in the VIP Areas; provided, however, that THBC shall be exclusively responsible for all concession and concession sales in such VIP Areas.

Section 8.06 IHC Home Game Employees and Contractors. For Home Games, IHC shall provide employees and contractors for:

- (a) A men's professional ice hockey game between the Team and League opponent in conformity with League rules and regulations;
- (b) Players, coaches, trainers, and uniforms/equipment to meet League standards and customary levels;
- (c) Referees and other League contractors to meet League standards and customary levels;
- (d) Medical personnel (and ambulance), including EMT(s), for players to meet League standards and customary levels;
- (e) Game operations to meet League standards and customary levels;
- (f) IHC kiosk and table sales and customer services; and
- (g) Audio/video/camera operators, scoreboard and ribbon board operator/s, and public address personnel to meet League standards and customary levels.

Section 8.07 Pre/Post-Game Activities. For the avoidance of doubt, IHC shall be entitled to use the Facilities during Hockey Events (e.g., skate with players, VIP events). Unless otherwise approved by THBC, the pre/post-game activities shall occur within the Hockey Designated Time.

Section 8.08 Extended Hockey Events. IHC shall be responsible for any incremental costs actually incurred by THBC from IHC activities that (a) materially extend beyond the Hockey Designated Time, and (b) are scheduled to occur on dates other than on the day of Hockey Events.

## **Article 9. Concessions & Beverages**

Section 9.01 Concessionaire. THBC shall identify an entity to oversee and provide concessions at the Event Center (the "**Concessionaire**"). THBC shall approve in its commercially reasonable discretion and cause the Concessionaire to (a) contract with parties who provide Sponsorships for the Event Center, so long as the material terms and conditions are commercially reasonable, and (b) reasonably cooperate with IHC to provide for promotions from time to time, so long as the material terms and conditions are commercially reasonable.

Section 9.02 Beverage Vendors. Notwithstanding anything to the contrary herein, IHC shall have the exclusive right to identify, interview and select, subject to the Goodwill Obligation, the beverage vendor(s), including both non-alcoholic and alcoholic vendor(s) and any and all pouring rights, so long as the material terms and conditions are commercially reasonable (individually or collectively, “**Beverage Sponsorship**”). Without the prior written consent of IHC, THBC shall not amend, modify or waive the Beverage Sponsorships or the commission provisions of any such Beverage Sponsorship. IHC shall not enter into any Beverage Sponsorship agreement that extends beyond the Term without the prior written approval of THBC.

Section 9.03 Food and Beverage Revenues. THBC shall be entitled to retain one hundred percent (100%) of all revenue generated from food and beverage sales at the Event Center. For purposes of clarity and notwithstanding the foregoing, IHC shall be entitled to retain one hundred percent (100%) of all Sponsorship revenue resulting from any Beverage Sponsorship (as distinct from revenue resulting from sales of beverages).

Section 9.04 No Other Beverage or Food Sales. Without THBC approval, IHC shall not sell any food and beverage items in the Event Center.

## **Article 10. Ticketing, Parking & VIP Seating**

Section 10.01 Ticket Prices. IHC shall determine the prices and terms upon which Hockey Event tickets shall be sold; provided that IHC shall charge a three dollar (\$3.00) facility fee (the “**Facility Fee**”) for each Hockey Event ticket actually paid for and not refunded, including tickets sold outside the box office such as ticket plans and group tickets.

Section 10.02 Ticket Database. THBC will endeavor to cause its ticketing contractor to work with IHC, including, without limitation, utilizing the ticketing contractor’s database information for sales and marketing purposes.

Section 10.03 Ticket Sales. Except for the Facility Fee, THBC shall not add service charges to ticket sales for Hockey Events. Except for the Facility Fee as further described above and Premium Seating as further described below, IHC shall be entitled to retain one hundred percent (100%) of (a) all ticket sale revenue generated from each Hockey Event, including, without limitation, party suite tickets, and (b) all amounts related to fees/refunds/rebates for Ticketmaster (or any successor) and/or box office fees for Hockey Events during the Term.

Section 10.04 Ticket Expenses. IHC shall be responsible for the cost of Hockey Event ticket stock and printing the tickets.

Section 10.05 Bad Debts. THBC shall be responsible for any bad charges from Hockey Event ticket sales, unless IHC does not use THBC’s ticketing system for such Hockey Events. THBC shall not accept checks for payment of ticket sales.

Section 10.06 Ticket Refunds. IHC shall be responsible for any Hockey Event ticket refunds.

Section 10.07 THBC & IHC Ticket Sale Authorization. For clarity, THBC shall only be authorized to sell single Hockey Event tickets in accordance with Section 8.04(a) (as opposed to groups sales, partial ticket plans, seasons tickets and Premium Seating tickets, which IHC shall have the exclusive right to sell).

Section 10.08 Parking Fees. THBC shall be entitled to retain one hundred percent (100%) of all parking revenue generated from the Parking Facility in connection with Hockey Events. During the first full ten (10) Contract Years, THBC shall not charge, and shall cause any applicable vendor or agent not to charge, more than ten dollars (\$10) per vehicle for Hockey Event parking. Thereafter, any increases in the rate of Hockey Event parking shall be commercially reasonable and consistent with parking charges at facilities like the Event Center and for events like minor league hockey games.

Section 10.09 Parking for Event Customers. THBC shall provide a reasonable number of parking spaces and reasonable locations for Hockey Event customers.

Section 10.10 Premium Seating Revenue. IHC has the sole and exclusive right to sell Premium Seating. Subject to Section 10.14, THBC shall be entitled to eighty percent (80%) of the gross revenue generated from the sale of Premium Seating, but THBC shall be responsible for reimbursing IHC as set forth in Section 10.11 below. Subject to Section 10.14, IHC shall be entitled to twenty percent (20%) of the gross revenue generated from the sale of Premium Seating, but IHC shall bear one hundred percent (100%) of the cost of the related commissions/marketing expenses.

Section 10.11 Premium Seating Tickets. Notwithstanding the foregoing, THBC shall be responsible for (a) furnishing tickets for manifested and sold Premium Seating for Other Events, and (b) reimbursing IHC for manifested and sold Premium Seating to Hockey Events. The parties have agreed that, in determining the amount owed pursuant to Section 10.11(b), (i) the value of each such ticket shall be based on the Average Ticket Price, and (ii) each loge seat requires one ticket, each club seat requires one ticket, and each suite requires a number of tickets depending on size and manifested seats. THBC shall not be responsible for reimbursing IHC, and IHC shall furnish at no charge, tickets for Pre-Season Games and Play-Off Games. THBC shall furnish at no charge a minimum of one parking pass for every four (4) manifested Premium Seating seats sold. IHC shall be entitled to offset amounts owed pursuant to this Section 10.11 against amounts owed to THBC for its eighty percent (80%) portion described in Section 10.10 above, provided, however, such offset shall be clearly documented and provided to THBC for review.

Section 10.12 Premium Seating During Other Events. To the extent that tickets for Other Events is included for Premium Seating, the agreement for such tickets, unless otherwise mutually determined by THBC and IHC, shall (a) require the licensee for such Premium Seating to request tickets to Other Events by a date certain (for example and without limitation, at least 120 days prior to the Other Event), and (b) state that licensees of Premium Seating relinquish tickets to such Other Events if the licensee does not request tickets by such date certain.

Section 10.13 Specific Suites. IHC and THBC shall each respectively have one reserved suite within the Premium Seating. Additionally, THBC shall have the right to purchase one additional

suite within Premium Seating for Andretti Autosports (the “**Andretti Suite**”). IHC shall pay the Suite Fair Market Value (as defined herein below) for its suite, THBC shall pay the Suite Fair Market Value for the Andretti Suite and THBC shall receive its suite free of charge and without any additional cost. For purposes of this Agreement, “**Suite Fair Market Value**” shall mean the estimated amount of \$65,000.00, per year. For purposes of clarity, the split of eighty percent (80%) and twenty percent (20%) set forth in Section 10.10 and the reimbursement obligations of THBC pursuant to Section 10.10 shall apply to the payments made by IHC and THBC pursuant to this Section 10.11; provided, however, Hockey Event tickets shall be furnished to the manifested seats within the suite reserved for THBC free of charge and the reimbursement described in Section 10.10 shall not apply.

Section 10.14 Party Suites; Additional Suite Tickets. With respect to party suites and any additional tickets sold to suite holders which do not appear on the manifest, IHC shall be entitled to (a) as described in Section 10.03 above, one hundred percent (100%) of all ticket sale revenue generated from each Hockey Event during the Term (including, without limitation, box office fees, and ticket provider rebates), and (b) twenty percent (20%) of all ticket sale revenue generated from each Other Event during the Term.

Section 10.15 Interior Naming Rights. IHC shall be entitled to retain one hundred percent (100%) of the revenue generated from the sale of Interior Naming Rights. IHC shall have the exclusive right to sell the Interior Naming Rights, subject to THBC’s commercially reasonable approval.

Section 10.16 Attendance Bonuses. THBC shall pay IHC an attendance bonus of five dollars (\$5.00) for each ticketed individual in attendance (i.e., the drop count) at Hockey Events during each Hockey Season (including Pre-Season Games and Play-Off Games and calculated on a cumulative basis) in excess of 162,000. For example, and without limitation, if, during the 2026 Hockey Season, 200,000 ticketed attendees attend Hockey Events, THBC shall pay to IHC \$190,000.00. For the avoidance of doubt, for purposes of this Section 10.16, tickets sales shall not equate to the actual of number of ticketed attendees that attend Hockey Events during the Hockey Season. THBC shall pay IHC such bonus within thirty (30) days of the end of the Hockey Season.

Section 10.17 Excluded Activities. The parties acknowledge and agree that, with respect to Premium Seating, certain events shall be excluded from comprehensive packages like those that may be sold for licensees to use suites. As used in this Agreement, “**Excluded Activity(ies)**” means and includes extraordinary events whose organizers require, as a condition of using the Event Center, exclusive control of all or substantially all suites. If an Excluded Activity is held in the Event Center, THBC shall, to the extent reasonably possible, offer licensees of Premium Seating an opportunity to purchase tickets to such Excluded Activity. Other Events that are deemed Excluded Activities may include for example and without limitation, NCAA events, NFL events, private events, conventions, trade shows, political events, charitable events, graduations and other non-recurring events. Licenses for Premium Seating shall specifically state that THBC shall have the right to utilize Premium Seating for Excluded Activities without giving prior notice to or obtaining consent from the licensee.

## **Article 11. Event Settlement**

Section 11.01 Collections of Ticket Sales. THBC shall collect on behalf of IHC and pay to IHC within ten (10) calendar days of each Hockey Event the face value of all single Hockey Event tickets sold in connection with such Hockey Event. THBC shall collect on behalf of IHC and pay to IHC within ten (10) calendar days of receipt all single Hockey Event ticket rebates, together with a reasonably detailed report with respect to the rebates.

Section 11.02 Facility Fee Payments. THBC shall be entitled to offset the Facility Fee amount owed to THBC against amounts owed to IHC pursuant to Section 11.01; provided, however, such offset shall be clearly documented and provided to IHC for review.

## **Article 12. Merchandising & Intellectual Property**

Section 12.01 Sale of Merchandise. IHC shall have the right to sell and shall retain one hundred percent (100%) of all revenues from sales of products, programs, promotional equipment and materials, novelties, and related items whether sold through the Team store, online, tables, kiosks or any other means (the “**Merchandise**”) regardless of whether such sales occur before, during or after Hockey Events.

Section 12.02 Restrictions on Merchandise. THBC reserves the right to prohibit sales of Merchandise in the Team store that it determines, in its reasonable discretion, violates the Goodwill Obligation.

Section 12.03 Intellectual Property Ownership. IHC and THBC acknowledge and agree that (a) all trademarks, service marks, copyrights, logos, and names related to the Event Center (collectively, “**THBC IP**”) are the sole and exclusive property of THBC, and (b) all trademarks, service marks, copyrights, logos, and names related to the Team and/or IHC (collectively, “**IHC IP**”) are the sole and exclusive property of the League or IHC, as applicable. Subject to the terms of this Agreement, THBC shall not use IHC IP, and IHC shall not use THBC IP, without permission of the applicable owner. Notwithstanding the foregoing, and for no additional consideration and for the duration of the Term, (x) THBC expressly licenses to IHC, THBC IP in connection with Merchandise and other activities of the Team that are not contrary to the Municipal Purposes, provided that the Merchandise also contains IHC IP or other intellectual property of IHC or its designee, and (y) IHC expressly licenses to THBC IHC IP in connection with THBC’s marketing and promotion of the Team or the Event Center, provided that such marketing and promotion also contains THBC IP or other intellectual property of THBC or its designee. For purposes of quality control and maintaining active ownership and control of the respective THBC IP and IHC IP, each party shall have the right to review the types and quality of merchandise sold. If, in the commercially reasonable judgment of a party, the other party is selling merchandise that is not of a satisfactory type or quality and that potentially violates the Goodwill Obligation, the party may require the other party to (i) refrain from selling any such product; or (ii) remove THBC IP or IHC IP, as applicable, from such product. IHC shall have up to six (6) months following the date of termination of this Agreement to continue selling Merchandise inventory bearing THBC IP existing at the time of such termination. This Section 12.03 shall survive termination of this Agreement.

Section 12.04 Retention of Intellectual Property. Except as provided in this Agreement, nothing in this Agreement shall be deemed to provide IHC with any rights in the intellectual property currently or in the future owned by THBC. Therefore, THBC retain all intellectual property rights including but not limited to trademark rights, copyrights and common law rights in, including but not limited to, its logo, name and colors and does not grant any form of license whatsoever to IHC for the use of such intellectual property rights outside the very limited use that is granted in this Agreement. Likewise, nothing in this Agreement shall be deemed to provide THBC with any rights in the intellectual property currently or in the future owned by IHC, its parent company or any subsidiary or affiliate of IHC. Therefore, IHC retains all intellectual property rights including but not limited to trademark rights, copyrights and common law rights in, including but not limited to, its logo, name and colors and does not grant any form of license whatsoever to THBC for the use of such intellectual property rights outside the very limited use that is granted in and made necessary in this Agreement.

Section 12.05 Sponsorship Requirement. IHC shall include in its Sponsorship agreements a requirement that the applicable third-party sponsor (a) grant to THBC and IHC, the right to use its applicable intellectual property related to such Sponsorship; and (b) represent and warrant to IHC that such third-party sponsor has the right and authority to provide such license to THBC and IHC.

### **Article 13. Naming Rights, Sponsorships & Promotions**

Section 13.01 Naming Rights Package. IHC shall have the exclusive right to sell the Naming Rights Package, subject to THBC's commercially reasonable approval of the Naming Rights Sponsor. THBC and IHC shall mutually agree on any applicable guidelines for such approval. The revenue from the Naming Rights Package shall be split eighty percent (80%) in favor of THBC and twenty percent (20%) in favor of IHC, after deducting any applicable third-party commissions to which IHC and THBC agree in writing to incur. THBC will bear one hundred percent (100%) of all costs and expenses related to (a) installing and affixing Signage and maintaining the medium on which Signage is displayed, as applicable, and (b) legal costs and expenses for the documentation of, and agreements related to, the Naming Rights Package. Except as set forth above, IHC shall be responsible for all other fulfillment costs of the Naming Rights Package.

Section 13.02 Sale of Naming Rights Package. THBC shall reasonably cooperate with IHC in the sale of the Naming Rights Package and the benefits and privileges to be included therein which may include benefits and privileges like the following, among others:

- (a) logo and name placed on Signage;
- (b) logo placed on podium stand used in the Event Center;
- (c) logo placed on media backdrop used by THBC or IHC in Event Center;
- (d) logo on Event Center staff uniforms;
- (e) logo on Event Center schedules for Hockey Events and other activities;

- (f) name and/or logo on all Event Center tickets for Hockey Events and other activities;
- (g) logo on Event Center parking passes;
- (h) full page ad in Home Game printed Event Center programs (if applicable);
- (i) logo on Event Center business cards (if applicable);
- (j) logo on Event Center activity schedules created by THBC;
- (k) logo on Event Center newsletters created by THBC – electronic, digital and print;
- (l) logo on all other various Event Center print and promotional materials created by THBC (such as magnet schedules, poster schedules, etc.);
- (m) media exposure on the Event Center social networking sites and internet;
- (n) public skating and concert media buys that mention the Event Center;
- (o) use of the Event Center for up to two activities for corporate or philanthropic purposes – dates based on availability;
- (p) parking related to the above;
- (q) the Naming Rights Sponsor’s name around the Team logo on center ice of the hockey surface; and
- (r) the Naming Rights Sponsor’s name and/or logo in locations on (i) the basketball court; and (ii) an area to be identified on or around the scoreboard.

THBC requests all Event Center licensee/tenants who reference the Event Center in their advertisements, promotions and other announcement’s (regardless of the media form) to reference the Naming Rights Sponsor.

Section 13.03 Sponsorships. IHC shall have the exclusive right, without infringing upon the intellectual property rights of THBC, other licensees/tenants or other third parties, to sell Sponsorships, which Sponsorships shall be subject to THBC’s approval in its commercially reasonable discretion. IHC shall not enter into any Sponsorship agreement that extends beyond the Term without the express written consent of THBC.

Section 13.04 Signage Revenues. IHC shall have the exclusive right year-round to sell and retain all revenues with respect to Signage, provided that (a) THBC’s licensees/tenants may sell Temporary Signage at Other Events and Electronic Signage during Other Events and retain all revenues with respect thereto, and (b) THBC may sell all forms of Signage, other than the Permanent Signage, outside the Event Center and on the Real Estate and retain all revenues with respect thereto. All agreements between IHC and third parties relating to Permanent Signage shall be subject to THBC’s commercially reasonable approval.

Section 13.05 Promotions Revenues. IHC shall have the exclusive right to sell and retain all

revenues with respect to IHC Promotions. THBC and entertainers or entertainment entities scheduled to perform at the Event Center shall be entitled to Other Event Promotions.

Section 13.06 Sponsorship Notices. Notwithstanding Section 36.04 (Approvals), IHC shall notify THBC in advance in writing of any prospective sponsor, related artwork and schematic drawings with respect to a Sponsorship and any related Permanent Signage. THBC shall notify IHC within five (5) business days whether it approves such sponsor and such artwork and the failure by THBC to provide such notice timely shall be deemed approved, it being understood that such sponsor and such artwork shall not contravene Municipal Purposes or the Goodwill Obligation.

Section 13.07 Miscellaneous Advertising. IHC shall have the exclusive right to sell, and retain all revenues for, the following in connection with Sponsorships, which Sponsorships shall be subject to THBC's approval in its commercially reasonable discretion and which shall not be an exclusive list of IHC's rights with respect to Sponsorships:

- (a) Advertising on two Zambonis on a year-round basis;
- (b) Activities at other mutually agreed parking areas for Hockey Events;
- (c) 50/50 drawings, if permitted by law for Hockey Events; and
- (d) Home Game ticket backs.

Section 13.08 Retained Rights of THBC. THBC shall have the right to use the Event Center in any manner that does not impede the rights of IHC provided herein, which rights, in addition to all others, include, but are not limited to:

- (a) THBC shall have the right of an Event Center licensee/tenant during Other Events, including the rights under Article 14 (Covering and Removal of Signage); and
- (b) the right to authorize its licensees/tenants to erect Temporary Signage and place kiosks on and around the floor and concourse of the Event Center as part of activities during Other Events.

Notwithstanding anything to the contrary herein, any Temporary Signage erected by THBC's licensees/tenants in compliance with this Section 13.08 shall not partially or completely cover any portion of IHC's Permanent Signage.

Section 13.09 IHC Revenues. With the exception of the Naming Rights Package, which shall be split in accordance with Section 13.01, IHC shall bill, collect and retain all Sponsorship revenue.

Section 13.10 Signage Fulfillment. Subject to Section 13.01 with respect to the Naming Rights Package, the installation, purchase, repair, maintenance and/or construction of any Signage as part of Sponsorships, except with respect to the Electronic Signage ("**Signage Fulfillment**"), shall be completed by IHC and shall be provided for and take place in a manner consistent with the construction standards and architectural look of the Event Center and Municipal Purposes. IHC shall be responsible for all costs related to design, production, installation/removal, and maintenance of all such Signage Fulfillment. THBC shall be responsible for all building

infrastructure and connectivity for the Signage Fulfillment.

Section 13.11 THBC Option to Assume Naming Rights Package. Upon termination or expiration of this Agreement, THBC may (but shall not be obligated to) assume and discharge all of IHC's rights and obligations under the Sponsorships, and IHC shall assign such Sponsorships to THBC. THBC shall thereafter be entitled to all revenues that become due and payable after the effective date of termination or expiration of this Agreement with respect to those Sponsorships.

Section 13.12 Vehicle Display. IHC shall have the right to place vehicle(s) in a prominent location outside the Event Center for marketing purposes.

## **Article 14. Covering and Removal of Signage**

Section 14.01 Covering and Removal of Permanent Signage. Covering of Permanent Signage may occur for Other Events where (a) the rules or regulations of the sponsoring organization or licensees/tenants require such coverage on a uniform basis for similar activities held around the country, or (b) the sponsoring organization has imposed as a condition on THBC that such interior Permanent Signage be covered. THBC shall promptly notify IHC of any agreement that requires covering Permanent Signage. THBC shall be responsible for such Permanent Signage covering and shall promptly remove such covering at the conclusion of such Other Event. THBC may not cover any Permanent Signage with anything except a plain, non-commercial covering.

## **Article 15. Electronic Signage**

Section 15.01 Electronic Signage; Ownership and Maintenance. THBC shall own, and shall be responsible for maintaining and insuring, the Electronic Signage.

Section 15.02 Scoreboard Advertisements. If the scoreboard or Electronic Signage is used for advertising during Other Events, IHC shall have, at no cost and on a calendar year basis, two (2) 30-second spots to promote the Junior Fuel, the Fuel Tank at Fishers, the Team and/or Hockey Events. At every Home Game, THBC and THBC's licensees/tenants shall have, at no cost, up to two (2) 30-second spots to promote Other Events. Both THBC and IHC shall be responsible for their respective production and programming costs.

Section 15.03 Concourse Televisions Advertisements. During each Home Game, THBC and THBC's licensees/tenants shall have, at no cost, the right to promote Other Events for twenty-five percent (25%) of the TV Messages displayed during such Home Game on the televisions located throughout the Event Center concourses, except for those televisions located within concession stands displaying such Home Game. During each Other Event, IHC shall have, at no cost, the right to promote the Junior Fuel, the Fuel Tank at Fishers, the Team and/or Hockey Events for twenty-five percent (25%) of the TV Messages displayed during such Other Event on the televisions located throughout the Event Center concourses, except for those televisions located within concession stands displaying such Other Event. Both THBC and IHC shall be responsible for their respective production and programming costs.

Section 15.04 Electronic Marquee Advertisements. THBC and THBC's licensees/tenants shall

have, at no cost, the right to utilize the Electronic Marquee to promote Other Events or for THBC's non-commercial purposes (a) for twenty-five percent (25%) of Home Games; and (b) seventy-five percent (75%) of all other times during which the Electronic Marquee is operational. IHC shall have, at no cost, the right to utilize the Electronic Marquee to promote the Junior Fuel, the Fuel Tank at Fishers, the Team and/or Hockey Events (x) for seventy-five percent (75%) of Home Games; and (y) twenty-five percent (25%) of all other times during which the Electronic Marquee is operational.

## **Article 16. Publicity, Video Messages, Signs & Banners**

Section 16.01 Public Safety Announcements. During every Hockey Event and at all other times, THBC reserves the right to make and cause to be made public safety announcements, which may utilize the scoreboard and the ribbon board.

Section 16.02 Outdoor Advertisements. IHC acknowledges that, other than the Permanent Signage and the vehicles permitted pursuant to Section 13.12, no signs, banners or other promotional materials may be displayed by IHC on the exterior of the Event Center or on the Real Estate without THBC'S prior written approval.

Section 16.03 Signage and Banner Costs. IHC shall be responsible for its sign/banner production, installation, removal, and maintenance costs.

## **Article 17. Broadcasting & Digital Rights**

Section 17.01 IHC Broadcast and Digital Rights. IHC shall retain all public and private photographic, recording and/or broadcasting rights for Hockey Events, whether digital or analog. Such rights include, but are not limited to, the right to broadcast or re-broadcast for any audience in any media, whether live or recorded, any Home Game or part of any Home Game. In addition, the League will also have rights to Home Game broadcasts. It is expressly understood that all copyrights in any such photography, recording or broadcast shall be owned by IHC and in no way shall THBC have any ownership right in or to the broadcast or any content in the broadcast. In no event shall THBC or anyone under its direction or control make any use of any photography, recordings or broadcasts of any Home Game other than for historical and marketing purposes absent the express written consent of IHC. To the extent that THBC obtains, by law or otherwise, a copyright or any other intellectual property or property right in any photo, recording or broadcast of any Home Game, THBC agrees to assign to IHC for no cost, fee or expense those rights, and to execute such documents reasonably required to give effect to such assignment.

Section 17.02 Broadcast Expenses. IHC shall be responsible for any expenses related to Home Game broadcasts (e.g., additional Internet connections). THBC will provide a dedicated Internet access line into the Event Center broadcast booth that meets IHC's specifications. IHC shall pay the monthly charge for such Internet access and may charge other users of the Event Center for such access.

Section 17.03 Recordings or Broadcasts. IHC retains any and all subsidiary rights in and to any recording or broadcast of any Home Game.

## **Article 18. Term**

Section 18.01 Term. Except as otherwise set forth in this Agreement, the Term of this Agreement shall begin on the Effective Date and shall end on the date that is the twentieth (20<sup>th</sup>) anniversary of September 1, 2024 (the “**Initial Term**”). The Term shall be subject to renewal pursuant to Section 18.02 and to extension pursuant to Article 29 (Loss of Use by IHC). The actual duration of this Agreement is referred to herein as the “**Term**”.

Section 18.02 Renewal Terms. IHC shall have the right to renew the Initial Term of the Agreement on the same terms two (2) times for a period of time in each case equal to the lesser of (a) five (5) years or (b) such period of time, if any, which shall not adversely affect the federal tax status of any outstanding federally tax-exempt obligations issued to finance or refinance the Facilities. To exercise such right to renew, IHC shall, not longer than one year nor shorter than six (6) months prior to the expiration date of the Initial Term or the first renewal period, provide written notice to THBC. Upon receipt of such written notice, THBC shall cause to be prepared by either or both (i) a certified public accountant knowledgeable in matters of tax-exempt bonds and/or (ii) nationally recognized bond counsel, an analysis pursuant to the Internal Revenue Code of 1986, as amended, and then in effect, including specifically Section 141 and Treasury Regulations Section 1.141, an analysis of whether the requested renewal, if authorized, would adversely affect the federal tax status of any outstanding federally tax-exempt obligations issued to finance or refinance the Facilities and, if so, the term of any such renewal which may be authorized without so doing. Upon receipt and review of such analysis, THBC shall then provide written notice to IHC of whether such renewal request will be accepted and, if so, the term thereof based upon the analysis.

## **Article 19. Alteration & Surrender of the Facilities**

Section 19.01 Alterations. Except as otherwise permitted in this Agreement or approved in writing by THBC, IHC shall not make any alterations, improvements, additions, or changes to the Facilities. All such alterations, changes, additions, or improvements shall be at IHC’s sole expense, and shall be abandoned or removed at the termination or expiration of this Agreement as set forth in Section 6.06 (Abandoned Property), unless THBC approves otherwise.

Section 19.02 Return Condition of Facilities. IHC shall return the Facilities to THBC at the expiration or termination of this Agreement in their original condition, together with approved improvements, reasonable wear and tear and damage by casualty excepted.

Section 19.03 As-Is Condition. Upon completion of the Event Center according to the approved plans disclosed to IHC and previously approved by the League, IHC shall accept all Facilities in as-is condition. THBC shall have no obligation to make any further capital expenditures but may do so at THBC’S sole discretion.

## **Article 20. License Fees**

Section 20.01 License Fees. IHC shall pay to THBC license fees each year as set forth in this Article 20. Subject to proration as described further below, IHC shall pay to THBC the annual sum of \$360,000.00 (the “**License Fee**”) during the Term. IHC shall pay the License Fee in

twelve (12) equal monthly installments each year during the Term in an amount equal to \$30,000.00. Notwithstanding anything to the contrary in this Agreement or otherwise, (a) payments of such monthly installments of the License Fee shall not become due or payable until the first business day of the month immediately after substantial completion of the Event Center, (b) for purposes of clarity, the License Fee (and the monthly installments thereof) shall be prorated for the year in which substantial completion of the Event Center occurs based upon the number of months remaining in that year after substantial completion of the Event Center, and (c) after payment of the monthly installments of the License Fee commences, such monthly installments shall be due and payable on the first business day of each month thereafter until the end of the Term. Except as otherwise set forth herein, IHC shall have no obligation to reimburse THBC for, and the following shall be the sole obligation of THBC: (x) Home Game day expenses related to the operation of the Event Center; (y) general Event Center maintenance, upkeep, and operating expenses; and (z) Event Center capital repairs, replacements or improvements. IHC shall not owe a separate rent or license fee for the use of the Team store. As used herein, the term “substantial completion” of the Event Center shall mean the date that the initial construction of the Event Center is completed, with the exception of such items that constitute minor defects or adjustments which can be completed after occupancy without causing material interference with IHC’s ability to use the Event Center for the purposes contemplated herein (i.e., “punch-list items”), as mutually agreed upon by the parties.

Section 20.02 Payment Terms. Except where otherwise noted, IHC shall pay to THBC any amount due under this Agreement within ten (10) calendar days after it is due.

## **Article 21. Notice to Parties**

Section 21.01 Notice. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by both email and U.S. first class mail, postage prepaid or hand delivered to the other party’s authorized agent or to such other person or address as the parties may designate in writing and deliver as herein provided:

Notices to City of Fishers shall be sent to:

Mailing Address: City of Fishers, 3 Municipal Drive, Fishers, IN 46038. ATTN: Scott Fadness, Mayor  
Email: fadnesss@fishers.in.us

With a copy to:

Mailing Address: City of Fishers, 3 Municipal Drive, Fishers, IN 46038. ATTN: Lindsey Bennett, City Attorney  
Email: bennettl@fishers.in.us

Notices to THBC shall be sent to:

Mailing Address: City of Fishers, 1 Municipal Drive, Fishers, IN 46038. ATTN: Jay Bangert, President  
Email: jbangert@hagermangc.com

With a copy to:

Mailing Address: Jennifer C. Messer, P.C., 202 E. 71<sup>st</sup> Street, Indianapolis, IN 46220.

ATTN: Jennifer Messer  
Email: jennifermesserlaw@gmail.com

Notices to IHC shall be sent to:

Mailing Address: Indiana Hockey Club, LLC, 12400 N. Meridian St., Suite 160, Carmel, IN 46032, James P. Hallett, Chairman  
Telephone: 317-925-3835

A copy of any Notices to IHC shall be sent to:

Mailing Address: Brad Schwer, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204  
Email: bschwer@taftlaw.com  
Telephone: 317-713-3480

Section 21.02 Effectiveness of Notice. All notices sent in accordance with this Article 21 shall be deemed given and effective on the date delivered if made in person or on the date deposited if sent via overnight courier service.

## **Article 22. Safety**

Section 22.01 Safety Obligations. THBC have final and complete authority on any issues relating to safety. IHC shall safely carry out its obligations under this Agreement. IHC agrees to prompt and complete compliance with all safety decisions made by THBC. Upon THBC'S reasonable request, IHC shall attend safety trainings.

Section 22.02 THBC'S Consent of Other Risky Activities. IHC activities that increase insurance premiums, require permits, and/or increase risks to attendees (e.g., pyrotechnics) require THBC'S prior written approval.

## **Article 23. Insurance**

Section 23.01 IHC Insurance. IHC shall, either directly or indirectly, maintain with insurers licensed to do business in the State of Indiana, the insurance coverages outlined below at its sole cost and expense throughout the duration of this Agreement, including any extensions. Coverage must be with an insurer acceptable to THBC. The insurers must have minimum AM Best rating of A VIII. Such coverage shall insure against claims, resulting from personal injury, bodily injury to, or death of persons and damage to, or loss of, property, in, on or about the Real Estate, as follows in connection with IHC'S acts or omissions:

(a) Commercial General Liability Insurance - Naming THBC and all of its and their respective lenders, licensees, subsidiaries and affiliates as well as each of their respective officials, directors, officers, partners, representatives, agents, successors, assigns, and employees (collectively, the "**THBC Insured Parties**" or individually a "**THBC Insured Party**") as additional insureds with the following minimum coverages and limits:

(i) \$1,000,000 Per Occurrence Bodily Injury and Property Damage

- (ii) \$1,000,000 Per Occurrence Personal and Advertising injury
- (iii) \$5,000,000 General Aggregate
- (iv) \$1,000,000 Products and Completed Operations Aggregate

General Aggregate to apply on a per location basis. The policy shall contain coverage for terrorism and shall not contain any exclusion except those customarily contained within the coverage form on such policies.

(b) Commercial Automobile Liability - In an amount of \$1,000,000 combined single limit for bodily injury and property damage, covering all owned (if applicable), non-owned or hired (if applicable) automobiles used in the course of this Agreement.

(c) Host Liquor Liability - In a minimum amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.

(d) Employers Liability - In a minimum amount of \$1,000,000 each accident, \$1,000,000 each employee and \$1,000,000 policy aggregate, covering all employees, volunteers, temporary employees, and leased workers.

(e) Umbrella or Excess Liability - Naming THBC Insured Parties as additional insureds, in a minimum amount of \$5,000,000 per occurrence, providing limits above the required Commercial General Liability, Commercial Automobile Liability, Host Liquor Liability, and Employers Liability primary limits. THBC retains the right to increase this limit requirement.

(f) Workers Compensation - In compliance with any and all statutes requiring such coverage in the State of Indiana, covering employees, volunteers, temporary workers and leased workers.

(g) Property - IHC shall be responsible for its own personal property, regardless of the type, to be insured on a replacement cost basis on a Special Causes of Loss form. Any such property insurance shall expressly waive any and all rights of subrogation against THBC Insured Parties.

If IHC engages any sub-licensees or independent contractors to complete or perform any work called for in this Agreement, IHC is responsible for maintaining evidence that all of the sub-licensees or independent contractors are compliant and maintaining the required insurance as though they were parties to this Agreement.

In the event IHC fails to procure, maintain, or pay for the required insurance as required of it in this Agreement during the Term, THBC shall have the right but not the duty or obligation to procure such insurance and pay the premiums, in which event IHC shall repay THBC within ten (10) calendar days of THBC'S demand, including all sums so paid by THBC.

All insurance procured/maintained by IHC, including the Umbrella or Excess Liability, shall be primary over insurance available to THBC Insured Parties. Any insurance

available to THBC Insured Parties shall be considered excess and non-contributing. Certificates of Insurance shall be provided to THBC or designated representative, evidencing that the required insurance has been obtained, and policies shall be made available for inspection upon request. The policies and certificates shall contain a provision that the Insurer will not cancel, non-renew or change in any material way the nature or extent of the coverage provided by the policy without first giving THBC thirty (30) calendar days prior written notice by certified or registered mail.

The insurance requirements set forth in this Agreement will in no way be intended to modify, reduce, or limit the indemnification herein made by IHC.

Any actions, errors, or omissions that may invalidate coverage for IHC insured shall not invalidate or prohibit coverage available to THBC Insured Parties.

Receipt by THBC of a Certificate of Insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same, nor is any verbal agreement to modify same permissible or binding. Any agreement to amend this provision of this Agreement must be in writing signed by both parties.

Notwithstanding anything to the contrary in this Agreement, nothing herein requires IHC to provide insurance coverage for Claims against a THBC Insured Party in an amount that exceeds the applicable aggregate and individual liability limits of the Indiana Tort Claims Act, IND. CODE § 34-13-3 *et seq.*, as amended; provided, however, such limitation on required insurance shall only apply to Claims subject to the Indiana Tort Claims Act., as amended.

IHC waives any claim against THBC for loss or damage that may be covered by a standard fire insurance policy with extended coverage endorsements and waives any right of subrogation with respect to any such loss or damage.

Section 23.02 THBC Insurance Waiver. THBC waives any claim against IHC for loss or damage that may be covered by a standard fire insurance policy with extended coverage endorsements and waives any rights of subrogation with respect to any such loss or damages.

## **Article 24. Indemnification & Defense**

Section 24.01 IHC Indemnification. IHC agrees to indemnify, defend, and hold harmless THBC and its respective agents, officers, and employees from all Claims, caused by (a) IHC's breach of this Agreement; or (b) any tortious act or negligent omission by IHC and its agents, officers, and employees, if any in the performance of this Agreement.

Section 24.02 THBC Indemnification. Subject to the limitations set forth in Section 36.10, THBC shall indemnify, defend, and hold harmless IHC, its affiliates, and its and their respective agents, officers, and employees from all Claims caused by (a) THBC's or City's breach of this Agreement; or (b) any tortious act or negligent omission by THBC or City and any of their respective agents, officers, and employees, if any in the performance of this Agreement.

Notwithstanding the foregoing or anything included herein to the contrary, IHC acknowledges and agrees that for Claims subject to the Tort Claims Act, THBC shall not be responsible for indemnification in excess of THBC'S potential exposure pursuant to the Tort Claims Act.

## **Article 25. Non-Exclusive Use**

Section 25.01 Non-Exclusive Use of the Facilities. IHC shall have use of the Facilities as set forth in this Agreement. IHC acknowledges that, from time to time, the use of various parts of the Event Center and Real Estate other than those areas which IHC has exclusive right will be used for Other Events. When a Home Game and Other Event is scheduled on the same day, IHC shall reasonably cooperate with THBC to allow the Event Center to host both the Other Event and the Hockey Event provided that there is no material, adverse impact on any such Hockey Event.

## **Article 26. Non-Discrimination**

Section 26.01 IHC Non-Discrimination. Pursuant to IND. CODE § 22-9-1-10, IHC (and any entity and/or person affiliated with it) shall not discriminate against any customer, employee, or applicant for employment, to be served and/or employed in the performance of this Agreement, with respect to service, hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, color, sex, disability, national origin, or ancestry.

## **Article 27. Confidentiality**

Section 27.01 Access to Public Records Act. IHC understands and agrees that THBC is a public agency that is subject to the Indiana Access to Public Records Act (“APRA”), IND. CODE §5-14-3-1, *et seq.* Any information that is maintained by, filed with or received by THBC under the terms of this Agreement will be kept confidential by THBC only if the information is confidential under the APRA. IHC understands and agrees that data, materials, and information disclosed to IHC by THBC may contain confidential and protected data. THBC shall prominently mark and otherwise identify all data, materials and information that contain confidential and protected data (the “**Confidential Information**”). Confidential Information identified and disclosed to IHC for the purpose of this Agreement will not be disclosed by IHC to anyone other than its personnel, agents, attorneys, accountants and/or representatives or discussed with third parties without the prior written consent of THBC. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information that (a) is or becomes part of the public domain through no fault of IHC or is subject to disclosure under the APRA, (b) is already known (at the time of disclosure) to IHC prior to disclosure of such information by THBC, (c) is subsequently received by IHC from a third party who IHC reasonably believes is not prohibited from transmitting such information by a contractual, legal, fiduciary or other obligation owed to THBC, or (d) is independently developed by IHC without access to any confidential or proprietary information of THBC.

## **Article 28. Approval of IHC's Contractors**

Section 28.01 IHC Contractor Requirements. IHC may utilize contractors under this

Agreement, but any such contractor shall meet all IHC's requirements under this Agreement and IHC remains fully responsible for any obligations.

Section 28.02 Approval of IHC Contractors. Prior to the commencement of work, IHC shall submit proposed contractors to THBC for approval. Where applicable, IHC may be required to use THBC's preferred vendors, provided that the cost and quality of work is substantially the same.

## **Article 29. Loss of Use by IHC**

Section 29.01 Destruction of Event Center. In the event that the Event Center is partially or totally destroyed or damaged or otherwise rendered unusable, the License Fee shall be abated for the period during which the Facilities or any part thereof is unfit for use by IHC in proportion to the percentage of the area of the Facilities which is unfit for use by IHC bears to the area of the Facilities; provided, however, if the damage is such that the Event Center cannot be reasonably used for Hockey Events the Event Center shall be deemed unusable for purposes of this Section 29.01. THBC shall promptly restore and rebuild the Event Center to substantially the condition existing prior to such casualty subject to delays associated with Force Majeure and insurance adjustment; provided that, THBC shall not be required to restore or rebuild the Event Center if the cost of such work exceeds the amount of insurance proceeds available to THBC for such restoration or rebuilding or if such rebuilding or repair is not reasonably expected to be completed within the Term. If the cost of such work exceeds the amount of insurance proceeds available to THBC for such restoration or rebuilding or if such rebuilding or repair is not reasonably expected to be completed within the Term, then THBC may elect to proceed with the rebuilding or reconstruction of the Event Center, in its sole discretion.

If the cost of the rebuilding or repair does not exceed the amount of insurance proceeds available to THBC for such restoration or rebuilding and if such rebuilding or repair is reasonably expected to be completed within the Term, THBC shall: promptly repair, rebuild or restore all damaged improvements with respect to the Event Center so as to make the Event Center to be in at least as good condition as immediately prior to such damage or destruction. All such repair, rebuilding or restoration shall be at THBC's expense. IHC may, in its sole discretion, (a) suspend operations, or (b) terminate this Agreement if THBC has not promptly undertaken the repair rebuilding, and/or restoration within six (6) months after the casualty and completed such repair, rebuilding, and/or restoration within two (2) years thereafter. License Fee payments shall abate and not be due and payable until such time as IHC again commences playing regularly scheduled Home Games at the Event Center.

Section 29.02 Extension of Term. Any period in which IHC does not have use of the Event Center that prevents the Team from completing one or more Hockey Seasons shall automatically extend the Term, as applicable, to make-up for the lost Hockey Season(s).

## **Article 30. Force Majeure**

Section 30.01 Force Majeure. Notwithstanding any other provision of this Agreement, the obligations of each of the parties hereto is subject to Force Majeure and such obligations shall be excused upon a Force Majeure.

## **Article 31. Termination for Default**

Section 31.01 THBC Termination. THBC may terminate this Agreement without prejudice to any rights and causes of action THBC may have against IHC, if:

- (a) There is a material breach of this Agreement by IHC, and THBC has first given IHC prior written notice and sixty (60) days' opportunity to cure such breach, provided that such sixty (60) days shall be automatically extended if IHC has commenced a cure and is diligently pursuing such cure;
- (b) IHC is judged bankrupt;
- (c) IHC makes a general assignment for the benefit of creditors; or
- (d) A receiver is appointed due to IHC's insolvency.

Section 31.02 IHC Termination. IHC may terminate this Agreement if THBC materially breaches any provision of this Agreement and IHC gives THBC prior written notice and sixty (60) days' opportunity to cure such breach, provided that such sixty (60) days shall be automatically extended if THBC has commenced a cure and is diligently pursuing such cure. Additionally, in the event IHC ceases to be a member in the League, IHC may terminate this Agreement upon one hundred eighty (180) days' notice to THBC; provided, however, unless IHC has filed for bankruptcy, IHC shall be liable for (a) payment of the License Fee, which License Fee shall continue to be paid pursuant to Article 20, and (b) for any obligations pursuant to provisions of this Agreement that by their express terms or nature survive termination.

## **Article 32. Damages & Additional Security**

Section 32.01 Consequences of Material Breach. IHC and THBC agree that THBC would suffer damages if this Agreement were terminated due to a material breach by IHC. Such termination would impair the ability of THBC to meet debt payment obligations and could result in unplanned taxpayer obligations. In the event of a termination described in Section 31.01, THBC shall be entitled to recover its damages.

Section 32.02 Additional Security. IHC expressly waives the requirement of any additional security from THBC.

Section 32.03 Limitation of Damages. IHC and THBC agree that any claim under this Agreement shall be limited to actual proven damages and equitable relief (e.g., specific performance), but shall exclude any claim for indirect, remote, consequential, punitive, or similar type damages.

## **Article 33. Disputes**

Section 33.01 Mediation. The parties shall attempt to resolve any disputes that may arise under this Agreement first by their respective executive officers or their designees discussing such dispute. If the parties are unable to resolve their dispute through the executive officers or their designees within thirty (30) days of notice of such dispute, the parties shall endeavor to resolve

their dispute by mediation for a period of no more than an additional sixty (60) days (the “**Mediation Deadline**”). The parties shall mutually and in good faith select a mediator. The parties shall equally share the mediator’s fees and any related filing fees. The mediation shall be held in Fishers, Indiana, unless another location is mutually agreed upon. Agreements reached between the disputing parties in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the dispute has not been resolved for any or no reason prior to the Mediation Deadline, any party may pursue litigation, subject to Section 36.08.

Section 33.02 Attorneys’ Fees. In the event of any litigation that arises out of or relates to this Agreement, the “prevailing party” in such litigation shall be entitled to recover its reasonable and documented attorneys’ fees and costs incurred in the litigation. For purposes of this paragraph, the term “prevailing party” shall mean the party that recovers all or substantially all of the relief requested in its pleadings and includes attorneys’ fees and costs incurred in the collection or enforcement of any judgment.

#### **Article 34. Assignment, Sub-licensing & Successors**

Section 34.01 Assignment. THBC and IHC bind their successors and assignees to this Agreement, and the successors and permitted assigns of the parties shall acquire the rights and benefits of the applicable party under this Agreement. IHC shall not assign this Agreement, without the consent of THBC, provided that IHC may assign its rights and obligations under this Agreement without the consent of THBC to a third party controlling, controlled by or under common control with IHC and/or any subsidiary or affiliate of IHC that has full power, authority, and capability to accept such assignment and perform the obligations of IHC hereunder, so long as Hallett has day-to-day control of such subsidiary or affiliate.

Section 34.02 Delegation of Obligations. THBC may delegate their obligations to authorized representatives.

#### **Article 35. Representations and Warranties**

Section 35.01 IHC Representations and Warranties. IHC represents and warrants to THBC that (a) the execution and delivery of this Agreement has been duly authorized on behalf of IHC, (b) IHC has obtained all necessary or applicable approvals to make this Agreement fully binding upon IHC, and (c) this Agreement is not subject to further acceptance by IHC when accepted by THBC.

Section 35.02 Representations and Warranties. Each of THBC and City represent and warrant to IHC that (a) the execution and delivery of this Agreement has been duly authorized on behalf of THBC and City, (b) each of City and THBC has obtained all necessary or applicable approvals to make this Agreement fully binding upon such party, (c) this Agreement is not subject to further acceptance by either City or THBC when accepted by IHC, and (d) neither City nor THBC are aware of any agreement, restriction, covenant, or other requirement which would either prohibit or materially adversely affect IHC’s ability to operate from the Event Center for the intended purpose.

#### **Article 36. Miscellaneous**

Section 36.01 Abatement or Cancellation for Failure to Deliver. Except as set forth herein, THBC shall not be liable for any failure to give possession of the Facilities to IHC upon commencement of the Term if such failure does not materially affect IHC's rights under the Agreement or is the result of: (a) the Facilities having been totally or partially destroyed by fire or otherwise being unfit for occupancy; or (b) the Facilities being unavailable for occupancy for any other cause or reason beyond the control of THBC. In the event of a material delay in the delivery of possession, then the parties shall agree upon a reasonable reduction in the License Fee with all other terms and provisions of this Agreement remaining in full force and effect.

Section 36.02 Access to Records. Each of (a) IHC and its agents and (b) THBC and its agents, shall have access at all reasonable times upon request to the other party's books, documents, papers, accounting records, and other evidence to the extent, but only to the extent, that such materials pertain to amounts owed or owing and/or payments made or to be made by such party to the other party under this Agreement. Each of IHC and THBC shall make such materials available for inspection by the other party or its authorized designees at its offices at all reasonable times during the Term and for three (3) years from the date of final payment under this Agreement. Copies shall be furnished at to the other party at no cost, if requested. Additionally, to the extent that THBC has collected revenue that shall be paid to IHC pursuant to this Agreement, including, without limitation, revenue from single Hockey Event ticket sales, such information shall be timely provided to IHC in spreadsheets or other forms generally consistent with typical finance, accounting and bookkeeping standards.

Section 36.03 Acknowledgement of the Naming Rights Sponsor(s). IHC and THBC shall use commercially reasonable efforts, when referring to the Event Center, to use all relevant sponsorship logos and names of the Naming Rights Sponsor(s) in all promotional advertising and public communications that mention the Event Center.

Section 36.04 Approvals. Any matter that must be first approved, consented or agreed to by either THBC or IHC shall be (a) in writing and executed by an authorized representative of the applicable party or parties, and (b) in the case of any required agreements, shall be agreed to mutually and in good faith. Notwithstanding any other provision in this Agreement, Manager shall be the designated representative of THBC and is hereby authorized to consent to any matters that THBC is entitled to consent to under this Agreement. In the event that Manager is no longer the designated representative of THBC, THBC shall provide written notice to IHC and shall provide written notice of the replacement designated representative. Until IHC receives written notice of the replacement representative, Manager shall remain the designated representative of THBC. Except as otherwise provided in this Agreement, any such approval, consent, or agreement shall not be unreasonably withheld, conditioned, or delayed.

Section 36.05 THBC Rules & Guidelines. IHC shall, and shall cause its servants, agents, employees, contractors, licensees, patrons and guests to abide by such reasonable rules and guidelines as may from time to time be adopted by THBC and its staff for the use, occupancy, and operation of the Event Center and Real Estate.

Section 36.06 Entire Agreement. This Agreement, upon complete execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this Agreement.

Section 36.07 Gender & Number. Wherever used or appearing in this Agreement, pronouns of the masculine gender shall include the female as well as the neuter gender, and the singular shall include the plural wherever appropriate.

Section 36.08 Governing Law & Venue. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of law rules. Any action must be brought in a court of competent jurisdiction located in Hamilton County, Indiana. IHC and THBC each waive, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right such party may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue.

Section 36.09 Headings. The headings of this Agreement are inserted for convenience of reference only and shall not be deemed to be a part thereof or used in the construction or interpretation thereof.

Section 36.10 Indiana Tort Claims Act. Notwithstanding the foregoing or anything to the contrary contained herein, IHC hereby acknowledges and agrees that THBC’s financial exposure for certain Claims is limited by the Indiana Tort Claims Act, and THBC’s obligation to indemnify and save IHC harmless from and against any and all Claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys’ fees and expenses at the trial and appellate levels) arising out of or related to Claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

Section 36.11 Legal Proceedings. THBC and IHC shall promptly inform the other party of the commencement of any legal action or proceeding related to a Home Game or this Agreement.

Section 36.12 Legal Relationship. In the performance of this Agreement, THBC and IHC shall act in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

Section 36.13 New Technology. If, during the Term, the equipment used to display, project or broadcast information with respect to the Event Center is replaced or the technology related to the display of any Signage or advertising changes, and such change necessitates a redesign or new production of the equipment used to display the Signage or advertising content, the parties shall mutually work together in good faith to plan for such transition. In all events, IHC shall continue to have the substantial equivalent visibility and exposure with replacement equipment or new technology. The cost of such equipment shall be borne by THBC. The cost of redesigning or reproducing content so as to be properly formatted for the new technology shall be borne by IHC.

Section 36.14 Review by Legal Counsel. Each party has had the opportunity to have this Agreement reviewed by legal counsel of its choosing.

Section 36.15 Replacement Rights. The parties acknowledge and agree that, during the Term, certain obligations of the parties with respect to specific tangible property (such as Signage around the Real Estate) may cease to be available or desirable due to advances in technology or

otherwise may become impracticable due to the passage of time. The parties shall work together in good faith to provide a right of equivalent value to the other party.

Section 36.16 Severability. If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful or unenforceable, it is agreed that the remainder of this Agreement shall remain in full force and effect.

Section 36.17 Taxes. THBC is exempt from federal, state, and local taxes. THBC shall not be responsible for any taxes levied on IHC as a result of this Agreement.

Section 36.18 IHC's Use of Facilities. IHC shall have during the time that IHC has the use of the Facilities, as more specifically set forth in this Agreement, the right, authority, license and privilege for and during the Term, to possess and occupy the Facilities without interruption by any party claiming under, by or through THBC or any third party. In the event IHC's use of the Facilities pursuant to this Agreement is materially affected, IHC may, at its option, terminate this Agreement in accordance with Article 31 (Termination for Default) and pursue all legal and equitable remedies available to it including damages from THBC or the third party who has materially affected IHC's rights under this Section 36.18, subject to Article 32 (Damages & Additional Security).

Section 36.19 Waiver and Modification. This Agreement may be modified upon written agreement signed by City, THBC and IHC. No right conferred on the parties under this Agreement shall be deemed waived and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

Section 36.20 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; provided, however, in no event shall this Agreement be effective unless and until signed by all parties hereto.

*[Signature Page Follows]*

73453552

IN WITNESS WHEREOF, City, THBC and IHC have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures below hereby agree to the terms thereof.

**INDIANA HOCKEY CLUB, LLC**

**CITY OF FISHERS, HAMILTON COUNTY, INDIANA**

**By:** \_\_\_\_\_  
James P. Hallett, Chairman

**By:** \_\_\_\_\_  
Scott Fadness, Mayor

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**FISHERS TOWN HALL BUILDING CORPORATION**

**By:** \_\_\_\_\_  
Jay Bangert, President

**EXHIBIT A**  
**REAL ESTATE**

## **EXHIBIT B**

### **AMBASSADOR SERVICES**

- The Event Center Ambassador would report to the Town Hall Building Corporation and Mayor's Office annually, or as needed, on the performance of the contracted operator of the Event Center's ability to provide a world class experience to the Fishers community.
- The Event Center Ambassador will strive to establish the Event Center as a positive asset for the City of Fishers and guests. This will include, but is not limited to, establishing and conducting focus group discussions, attending marquee events (ex: Spark Fishers) in an official capacity, periodically attending and engaging with the community at recurring events such as the Farmers Market, and establishing membership and speaking at professional groups such as the Rotary.
- The Event Center Ambassador will strive to stay current on best-in-class practices and concepts related to the operations, experience creation, and uses of world-class event centers in North America to ensure Fishers maintains a vibrant asset that attracts top tier talent, and hits attendance levels that meet or exceed expectations for each event (ECHL averages, concert averages, etc.).
- The Event Center Ambassador, as a representative of the City, will focus on ensuring positive experiences are created in the Event Center for all guests.