

OCCUPANCY AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2023

BETWEEN:

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(hereinafter called the "Owner")

OF THIS FIRST PART
-and-

ADMIRALS HOCKEY ASSOCIATION
(hereinafter called the "Club")
OF THE SECOND PART

WHEREAS the Owner is the Owner of lands and premises known and described municipally as the Libro Centre, 3295 Meloche Road, Amherstburg, Ontario, (the "Facility");

AND WHEREAS the Club wishes to use portions of the Facility for the purpose of conducting the activities of a junior hockey team, including but not limited to the playing of scheduled regular season and playoff games, practicing and training, (the "Permitted Uses");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants, term and agreements hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Club hereto agree as follows:

SECTION 1 – TERM & OCCUPANCY

1. This Agreement shall come into full force and effect on June 1, 2024 and shall remain in force and effect until May 31, 2027.
2. The Owner covenants and agrees to provide the Club:
 - a. With ice surface facilities and amenities as hereinafter described at the Facility;
 - b. Exclusive use of dressing rooms 5 and 7 (marked as "A" on Schedule A attached, the "Dressing Rooms"), subject to the Owner's right to continue to store

its Audio Visual equipment in the Dressing Rooms as is the current practice. Only items relevant to the Club's program at the Libro Centre may be stored in the Dressing Rooms. The Owner shall clean the Dressing Rooms on a regular basis, subject to the Club keeping the area free of items on the floors any other stored items which would impede regular cleaning functions and the owner shall not be liable for any loss or damage to any items stored by the Club in the Dressing Rooms.

- c. The use of the ice facility known as Rink A within the Facility (marked as "***" on Schedule A attached, "Rink A"), subject to the following terms:
- i. The ice conditions on Rink A are safe and there are no maintenance or mechanical issues. If any issues arise or exist, Rink B may be used as an alternate location on a temporary basis until Rink A is deemed safe and usable;
 - ii. for a minimum of three (3) hours of continuous time for hockey games as scheduled by the Greater Ontario Junior Hockey League, ("Games"), which shall commence not less than thirty (30) minutes prior to the scheduled start times of such Games. Games will be played on dates and at times scheduled by mutual agreement between the Owner and the Club and the use of Rink A will be at a cost to be paid by the Club to the Owner as detailed in Clause *** of this Agreement as per the User Fee By-Law;
 - iii. Rink A shall be clean and ready to use upon the commencement of its use by the Club as detailed in Clause 2.1 (c)(i), and prior to the start of any period during regulation time of any Game, in accordance with the standards of the Western Ontario Hockey League and/ or the Greater Ontario Junior Hockey League.
 - iv. In the event that the Indoor Turf located in the Facility is not in use and/or is not being rented out by the Owner to other user groups, the Club may use the area free of charge, for a total period of one hour only, for warm up purposes prior to a scheduled home game. Such use must be reserved and booked at least one week in advance of use with the Owner's Scheduling Clerk.
 - v. In the event that Rink A is unavailable due to mechanical issues, maintenance requirements or other issues as deemed necessary by the Owner, the Club may be required to use Rink B in its place. In the event that both Rink A and Rink B are unavailable, due to mechanical issues, for the Club's use for a scheduled game, the Owner will use best efforts to make other arrangements acceptable to the Club. Should the Club experience financial losses as a result of the unavailability of Rink A and Rink B, the Owner will consider the same and will use best efforts to come to an acceptable agreement with the Club for compensation of the such proven losses.
 - vi. The right to 1.5 additional hours of ice time each week on either Rink A or Rink B in the Facility, as available for the purpose of conducting Club practices during the Hockey Season which will be invoiced accordingly by

the Owner to the Club in accordance with Clause 3.1(a) herein. The dates and times of these practice sessions may be changed by mutual agreement between the parties.

- d. Access to the following additional areas in the Facility:
- i. The press box in the southwest corner of Rink A (marked as "B" on Schedule A attached,) on Game Days (the days upon which Games are played pursuant to this Agreement) only, for the purposes of use as a Press Box. There will be no additional fee for use of the press box as the rate will be part of the regular hourly ice rental rates as per the current User Fee By-Law
 - ii. The laundry facilities with water, utilities and venting provided by the Owner, and with the washer and dryer equipment to be supplied by the Club, (the "Laundry Facilities"). The Owner retains the right to relocate the Laundry Facilities in its sole discretion and in the event of such relocation, the Owner will use best efforts to liaise with the Club regarding the new proposed location and to provide the Club with forty-five (45) days prior notice; and
 - iii. the lobby of the Facility (marked as "D" on Schedule A attached), the "Lobby", for the purpose of selling tickets from a table/kiosk which is configured in a manner which restricts unpaid access to Rink A while being used for Games; such access to the Lobby to be made available two hours prior to and during Games and at other times as may be mutually agreed upon by the Owner and the Club.
- e. The necessary services, as detailed in this Agreement, to carry on all Games at the Facility, notwithstanding any strikes and/ or any other work stoppage by the Owner's employees.
- f. The Owner will ensure all entrances are secured prior to the Admirals taking the ice on game days. This includes doors on the upper level.

3. The Club covenants and agrees that:

- a. Notwithstanding the uses permitted in Clauses 1.2 (b), the Owner may use any or all of the areas described therein with the prior written permission from the club.
- b. Notwithstanding the uses permitted in Clauses 1.2 (d), the Owner may use any or all of the areas described therein;
- c. It shall maintain all permitted areas of use, while being used by Club, in a good state of repair, and ordinary cleanliness, and agrees that it shall notify the Owner of any state of disrepair or damage done to those areas;
- d. It shall at its expense, and at all times, strictly comply with all requirements of all

laws and regulations now or hereafter in force which pertain to or affect the Facility or the conduct of any of its activities in the Facility, and shall ensure the like compliance of all persons using the Facility for whom in law it is responsible;

- e. It shall observe and comply with all policies, procedures, rules and regulations that the Owner has in effect respecting the Facility, equipment and related personnel services hereto, as the case may be, and to ensure the like compliance of all persons using the Facility for whom in law it is responsible;
- f. It shall provide at its own expense all other items, matters and things for Club Games scheduled at the Facility including, but not limited to, referees, goal judges, announcers, penalty time keepers, clock operators and ushers, staffing for the sale and collection of tickets.
- g. It shall not make any structural or re-modelling changes to any occupied space in the Facility without first obtaining the written consent of the Owner. Any such changes, save and except the player stalls currently installed in the Dressing Rooms, will become part of the Facility and will become the property of the Owner OR, at the sole option of the Owner the Owner may determine that the space must be returned to its pre-existing condition at the sole expense of the Tenant;
- h. It shall ensure that all equipment owned by the Club, and used at the Facility, meets or exceeds minimum safety standards by all governing bodies such as TSSA, CSA, etc. and is maintained in good operating order. The Owner may request a third-party inspection of the equipment, at the Club's expense.;
- i. It shall not conduct or advertise any promotional events, special events or any non-Game events at the Facility without first obtaining the Owner's written consent, which consent will not be unreasonably withheld;
- j. It shall allow the Owner to approve scheduling of all Games to take place in Rink A during the term of this Agreement, or Rink B if Rink A is deemed unusable due to safe ice conditions, maintenance issue, etc. However, the Owner shall:
 - i. not object to the regular season schedule adopted by the Board of Governors of the Western Ontario Hockey League and/ or the Greater Ontario Junior Hockey League and/or the Provincial Hockey League, so long as the Owner is informed of and agrees to the scheduling of any regular season games by the 1st day of August in each year during the term of this Agreement; and
 - ii. Allow the Club the right to schedule playoff hockey games at the Facility during the term of this Agreement in accordance with guidelines and deadlines imposed by the Western Ontario Hockey League and/ or the Greater Ontario Junior Hockey League and/or the Provincial Hockey League, and within the facilities regular operating hours, subject to any events that may already be booked during the requested times. In such circumstances the Owner will use all best efforts to accommodate the

schedule requests of the Club.

- k. The Club acknowledges that no alcohol is permitted in the Facility and the Club must comply with all municipal alcohol policies and in accordance with the Alcohol and Gaming Commission of Ontario (AGCO);
- l. The Club acknowledges that the Libro Centre is a smoke-free facility and the Club must comply with all municipal by-laws and the Smoke-Free Ontario Act S.O. 2017; and
- m. The Club agrees to not exceed maximum capacity of Rink A or Rink B.

SECTION 2 – ADVERTISING, BROADCASTING & SEASON TICKETS

1. The Parties agree that the Club shall have the following rights pursuant to this Agreement:
 - a. the exclusive right to sell and retain all revenues from the sale of advertising inside the walls for Rink A in the Facility, excluding the Zambonis, on the following terms and conditions:
 - i. Advertising may be sold and installed on all dasher boards in Rink A, as per Schedule “B” attached, at no expense to the Owner, provided that the size and type of advertisements to be installed on the dasher boards shall meet industry standards for such signs, including the protective Plexiglas that covers over top of each advertisement;
 - ii. Back-lit wall mounted signs may be installed, at the cost of the Club, in each of Rink A at no expense to the Owner, as per Schedule “B” attached, and the Owner will provide the power supply for each such sign at the Owner's cost;
 - iii. Wall signs inside Rink A, each not to exceed 4' high x 5' wide, as per Schedule “B” attached, may be installed at no expense to the Owner;
 - iv. a maximum of 3 wall signs inside Rink A on the Press Box wall, as per Schedule “B” attached, may be installed at no expense to the Owner;
 - v. Advertising signs on the windows of the meeting room that face the rink and the windows on the north side of the Rink A, as per schedule “B” attached;
 - vi. the Owner shall have the right to approve any and all of the advertising signs proposed to be installed in Rink A, and the Owner shall have the right to refuse to allow any such sign, in its sole discretion;
 - vii. All advertising contracts shall be managed by the Club at its sole expense and all advertising agreements must end on or before the end date of this

agreement. The wording of all advertising agreements entered into by the Club shall be approved by the Owner; and

- viii. Should this agreement terminate prior to May 31, 2027, any advertising commitments the Club has will remain in effect provided the remaining revenue from such agreements be directed to the Owner and wording to this effect shall be included in all Advertising Agreements entered into by the Club with advertisers.;
 - ix. A list of all sold advertising, together with copies of all executed advertising contracts entered into by the Club with respect to the Facility, shall be provided to the Owner in a timely fashion after each contract is executed between the Club and advertiser(s) to enable the Owner to coordinate installation of signage with the advertiser(s).
- b. The exclusive right to sell and retain all revenues from the sale of souvenirs, programs and other Club products during Games only;
 - c. The right to place temporary signs on the Facility property inside or outside of the Facility for the purposes of advertising the Games, which signs shall be provided at the expense of the Club. The Club acknowledges that the number, size, type and location of these signs shall be subject to the approval of the Owner, and the said signs shall be in compliance with all applicable laws, including the Town of Amherstburg Sign By-law;
 - d. The exclusive right to display the team name and an in-ice logo at center ice of Rink A in the Facility. The Club agrees to be responsible for provision of the in-ice logo at the Club's expense, including any contractor or facility fees for installation, etc. The Owner shall install team name and in-ice logo annually, ensuring visibility and clarity from all locations inside "Rink A" in the Facility. The Club must provide new stencils, at the sole cost of the Club, as requested by the Owner. The stencil(s) will be returned by the Owner to the Club at the end of each season, to inspect and store during the off-season;
 - e. Subject to clause 2(1)(f) herein, the exclusive right to display corporate sponsor names and in-ice logos on the ice of Rink A at the Owner's expense for installation and any other required costs. The Club agrees to be responsible for provision of the in-ice logos at the Club's expense. The Owner shall approve the logo size and install the sponsor in-ice logo annually, ensuring visibility and clarity from all locations inside Rink A in the Arena. Should this agreement terminate prior to May 31, 2027, any advertising commitments the Club has made with respect to in ice logos will remain in effect provided the remaining revenue from such agreements is directed to the Owner;
 - f. The Club acknowledges that two in-ice logos of the Amherstburg Minor Hockey Association shall be installed by the Owner, at no charge, in Rink A, each hockey season;
 - g. The right to hold and retain all revenue from legal 50-50 draws and/or any other revenuegenerating programs run by the Club at the Facility between September

1st and April 30th each year. All programs are to be properly licensed and will not be held without first obtaining the Owner's written consent, which consent may not be unreasonably withheld;

- h. The right to broadcast the Club's Games played at the Facility by radio, television, closed circuit, cable, satellite or over the internet, which shall occur at no expense to the Owner;
 - i.
- 2. The Owner agrees and covenants that it shall mark the seats in Rink A in a fashion that enables the Club to sell season tickets/designated seating for its Games. Use of "reserved" stickers may be used on seats in "Rink A", subject to the prior approval of the Owner. The stickers should be removable with no maintenance or cost to the Owner.
- 3. The Owner agrees that the Club may install, at its sole expense, signage indicating that the Facility is the "Home of the Amherstburg Admirals" (or similar messaging) in the following areas of the Facility, the exact locations, size and design of the signage to be mutually agreed upon between the Owner and the Club and provided that such location is not currently an advertising location for which the Town generates revenue:
 - a. The interior front entrance/ Lobby of the Facility; and /or
 - b. Sign at the entrance of the property
- 4. The Owner agrees that it shall advertise the time and date of each scheduled home game of the Club on its Gateway LCD signs at times solely within its discretion, and provided that such advertising shall not be for more than a 48 hour period prior to each home game .

SECTION 3 – FEES & REVENUES

- 1. The Club agrees to pay to the Owner the following amounts during the Term of this Agreement:
 - a. The Owner's current ice rental rate plus capital surcharge fee, plus applicable taxes for Ice Time Booked, in accordance with the Owner's User Fee By-law. The Owner shall send notice to the Club of any amendments to the User Fee By-law. All amounts shall be duly invoiced by the Owner to the Club and shall be subject to interest, which after 30 days from the date of the invoice, shall accrue on unpaid balances at the rate of 1.25% per month (15% per annum). and
 - b. The owner's current rental rate for any storage required by the Club in addition to

that provided by the exclusive use of the Dressing Rooms.

SECTION 4 – RENEWAL

1. Provided the Club is not in default, this lease will remain in effect for a three (3) year period at which time the Club shall have the option to renew the Agreement for a further term of two (2) years upon such terms and conditions as are mutually agreeable to the Parties. If the Club elects to extend this Agreement, the Club shall do so by giving to the Owner notice in writing of the Club's intention to do so not later than twelve (12) months prior to the expiration of the Term of this Agreement.
2. Notwithstanding the provisions of Clause 4.1 herein, the Owner shall have the right to remove the Club's option to extend this Agreement upon giving the Club notice in writing of the said removal no later than twelve (12) months before the termination date of this Agreement.

SECTION 5 – TERMINATION

1. The Club may terminate this Lease, without cause, upon a minimum of **six (6) months written notice**, and the termination date shall be the date identified in the termination notice. In the event that this Agreement is terminated by the Club in accordance with this Section, all Advertising Contracts entered into by the Club pursuant to Section 2 herein shall be assigned to the benefit of the Owner and any Advertising revenue that has been prepaid to the Club for the period from the date of the early termination pursuant to this Section to and including the normal Termination Date pursuant to Section 1 herein shall be paid by the Club to the Owner.

Commented [MO1]: Is this where we could/should add in anything about advertising revenue owed to Town is this agreement ends sooner? Or do we just have them add a clause into their advertising agreements to that effect?

SECTION 6 – INSURANCE & INDEMNIFICATION

1. The Club shall, during the entire term of this Agreement, and its sole expense:
 - a. indemnify and hold harmless the Owner and its respective officers, councilors, duly authorized agents, employees and servants from and against all loss or damage and from and against any and all claims, actions, suits or proceedings brought against any of them for personal injury, property damage, death and any other losses, damages, charges or expenses, including reasonable legal fees, which arise in connection with, or by reason of any act, omission or negligence of the Club or of any occupant, visitor or user present on or about the Facility in connection with the Club's activities, other than those matters arising wholly by any act or omission or negligence of the Owner, its agents, contractors, employees, servants or licensees; and

- b. Purchase and maintain a policy of public liability and property damage insurance, with an endorsement showing the Owner as an additional named insured. Such policy of insurance shall also contain an endorsement giving the Owner thirty (30) days prior written notice of any material alteration or cancellation of said policy. Such policy shall be written by insurers authorized to do business in the Province of Ontario and shall have coverage in the minimum amount of \$5,000,000.00 for a single occurrence. A copy of such policy of insurance, including a copy of all renewal documentation, shall be delivered to the Owner annually.

Commented [VC2]: Matt – you noted that this is “not accepted” however this is standard in all of our Agreements and must be included.

SECTION 7 – ASSIGNMENT

1. Neither this Agreement, nor any amendment or renewal thereof may be assigned by any party hereto, without the consent in writing of the other party hereto, which consent may not be unreasonably withheld.

SECTION 8 – NOTICE

1. Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is: (a) delivered personally to an officer or director of such party; (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or (c) sent by electronic means.
2. Notices shall be sent to the following addresses:
 - a. in the case of the Owner:
The Corporation of the Town of Amherstburg
271 Sandwich Street South
Amherstburg, ON,N9V 2A5
Attention: Kevin Fox, Municipal Clerk
 - b. in the case of the Club:
Matt Fox - 156 Hunter Drive, Amherstburg Ontario N9V1W2
Greg Crain 26 Tennessee CT Amherstburg Ontario N9V 2S7
3. Or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.
4. Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall: (a) if delivered as aforesaid, be deemed to

Commented [VC3]: Need Address

have been given, sent, delivered and received on the date of delivery; (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth business day following the date of mailing, unless at any time between the date of mailing and the fourth business day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and, (c) if sent by electronic means, be deemed to have been given, sent, delivered and received on the date the sender receives confirmation of receipt by the recipient.

SECTION 9- MISCELLANEOUS

1. This Agreement constitutes the entire agreement entered into between the parties and this Agreement supersedes all previous verbal and/ or written communications, representations, promises or statements.
2. This Agreement may be amended, in writing, with the consent of both parties hereto.
3. The parties hereto agree that with respect to any services to be provided, payments to be made or action to be taken by either of them during the term of this Agreement, the party required to furnish or perform the same shall in no event be liable for failure to do so when prevented by any cause beyond the reasonable control of such parties such as inclement weather, accident, order or regulation of or by any governmental authority, or inability by the exercise of reasonable diligence necessary to furnish such services, or war or other emergency.
4. Access to the facility for all participants, including 'away' teams, players, referees, coaches and management should be through the public access doors only (i.e. the front door or the side door under the canopy). Building access is during regular operating hours only.
5. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by the hand of their respective duly authorized signing officers.

Dated at Amherstburg, Ontario this _____ day of XXX, 2024

#COMPANY NAME

_____ Matt Fox/ Greg Crain _____

#COMPANY NAME

_____ Amherstburg Admirals Inc. _____

OWNER'S NAME

OWNER'S NAME

I have the authority to bind the
corporation

**THE CORPORATION OF THE TOWN OF
AMHERSTBURG**

Mayor – Michael Prue

Commented [TM4]: CAO signing also?

Clerk – Kevin Fox