

**PECONIC HOCKEY FOUNDATION RECREATION FACILITY DONATION &
MANAGEMENT AGREEMENT at VETERANS MEMORIAL PARK**

This Agreement is made as of _____, _____, between the Community Development Agency for the Town of Riverhead having its offices at 200 Howell Avenue, Riverhead, NY 11901 (“Town”), and PECONIC HOCKEY FOUNDATION (“Manager”), a New York Not for Profit 501-c(3) organization having its offices at P.O. Box 374, Wading River, New York 11792.

W I T N E S S :

WHEREAS, community members and Town officials have identified a strong need for additional recreation facilities within the Town of Riverhead for the benefit of residents and, in particular, the youth of the community; and

WHEREAS, the Town Board of the Town of Riverhead has received and considered a proposal for the siting of an indoor, full size ice skating recreational facility in the Town and are excited about the opportunity to locate said facility at Veterans Memorial Park (EPCAL); and

WHEREAS, Manager, based out of Wading River, New York, is a Not-For-Profit Corporation, whose mission is to grow the game of hockey through scholarships, training, and other programs, as well as offset the cost of participation to create more opportunities to families who want to play hockey; and

WHEREAS, Manager approached the Town to donate an indoor ice skating recreational facility (the “Facility”) to the Town as a gift; and

WHEREAS, the Riverhead Town Board has determined to accept the gift of the Facility for the benefit of the residents of the Town, and upon consultation with and/or recommendations from the Riverhead Recreation Advisory Committee, the Riverhead Town Recreation Department, Town Engineers, Planning Department, Community Development Department, Office of the Town Attorney and substantial written support from residents of the Town of Riverhead and Suffolk County in a portion of Veterans Memorial Park (EPCAL), a municipal park, for public use by residents of the Town and other area users subject to an opinion from the New York State Office of Parks, Recreation and Historical Preservation and/or the New York Attorney General relative to the appropriateness of Veterans Memorial Park for the Facility and management of same as set forth more fully herein below; and

WHEREAS, Manager has agreed to provide proof of financial ability to complete construction of the “Facility” in a form commonly accepted and to the satisfaction of the Town; and

WHEREAS, the Town has determined to engage the Manager as a manager of the Facility, on the basis of the Manager’s experience and expertise in operating facilities similar in type to the Facility; and

WHEREAS, Manager shall, as part of its services as Manager hereunder, offer Town residents a hometown ice hockey venue for youth and adult leagues, with reduced rates and other community ice rink related programs and access for the general public to be set forth with greater particularity herein; and

WHEREAS, the Town of Riverhead and Manager agree that Veterans Memorial Park offers substantial potential and available, underutilized and/or unused space such that future expansion of the Facility and the operations and activities therein subject to further approval of the Riverhead Town Board and subsequent opinions from the New York State Office of Parks, Recreation and Historical Preservation and/or the New York Attorney General relative to the appropriateness of Veterans Memorial Park for the Facility and management of same as may be further ascertained and defined at such time as expansion is mutually agreeable to Manager and the Town; and

WHEREAS, the Riverhead Town Board is in support of this most worthwhile endeavor to benefit the community and, in particular, its youth; and

WHEREAS, the Town and Manager believe that Manager's proposed construction of a recreational ice skating rink designed to provide health and well-being programs to local and county residents on, over, and in the ground space of unused, undeveloped and underutilized areas of Veterans Memorial Park known and described as SCTM #0600-135.00-01.00-007.33 and which area is further depicted at **Exhibit "A"** hereto is a compatible, desirable, and lawful use, making an effective utilization of land from both a planning and economic development viewpoint; and

NOW, THEREFORE, in consideration of the foregoing and other good and sufficient consideration, the parties hereto enter into the following Agreement:

1. **Term**. This Agreement shall commence on _____, 2022, (the "Commencement Date") and shall continue for a term of ten (10) years, unless sooner terminated as provided in Section "12. Default" below. Upon signing, Manager shall, within _____ days, provide proof of a performance bond or other surety in an amount sufficient to complete construction of the Facility.
2. **Managed Premises**. On the Commencement Date the Manager shall have the obligation to construct and, upon completion of construction, shall have exclusive right to manage the Facility for the benefit of, and on behalf of, the Town. As used herein, the term "Facility" shall mean both the ice rink and its component parts, including locker rooms, storage areas, and the adjoining parking area, that is more specifically identified on the survey/site plan attached hereto as **Exhibit "A"**.
3. **Conveyance of the Facility to the Town**. On the Commencement Date, Manager shall donate to the Town, by documents satisfactory in form and substance to the Town

Attorney, title to and ownership of the Facility free and clear of all liens and encumbrances. The Town shall acknowledge receipt and acceptance of the donation of the Facility from the Manager in form acceptable for tax purposes. Other than such acknowledgement of receipt and acceptance of such donation, the Town shall have no obligation with respect to the tax treatment of the donation by Manager.

4. **Site Preparation.** Manager shall commence construction of the Facility within ___ days of the Commencement Date and, as described hereinabove, completion of construction of the Facility shall be secured by performance bond or other surety.

The Manager shall be responsible for preparing the site for delivery of the Facility and bear all costs and expenses in connection therewith, including but not limited to installation of infrastructure and fixtures sufficient to supply the facility with electricity, water, sewer and any other necessary utilities, grading, clearing and/or leveling necessary to prepare the site for delivery and construction of the Facility and any fees associated with applications, inspections, surveys, environmental review and storm water management. Manager shall maintain compliance with prevailing wage requirement through all phases of construction of the Facility.

Manager's use and occupation of the Subject Property (and the subsurface of it) during the progress and period of construction or by anyone acting under or on behalf of the Manager—for all acts other than the acts of the Town, its officers, agents, and employees—the Manager covenants to indemnify, defend and hold harmless the Town and its agents and employees from and against all claims and demands whatsoever for loss or damage, including property damage, personal injury and wrongful death arising out of entry or construction and development of the Subject Property or in the performance of this Agreement by the Manager, its agents, employees, contractors, subcontractors or invitees or as a result of any incident, fire or other casualty in respect of the Subject Property, or any failure by the Manager to keep the Subject Property, or any Improvements on it, in a safe condition, and furnish the Town with the form of comprehensive general public liability insurance policy and fire and casualty policy for the amounts and subject to the provisions described in "Section 11" below.

The Town shall, stake and clear an area for a parking area sufficient to accommodate use of the Facility and maintain and operate same in a good, clean and orderly condition and repair for parking purposes throughout, at least, the term of this Agreement and any renewals or extensions hereof. Manager understands and acknowledges that construction of such parking area may be completed in phases whereby the parking area is paved at a later date and that use of the parking lot shall not be exclusive to the Facility.

Additionally, subject to available funding, the Town shall endeavor to install a detached/freestanding bathroom facility to service the Facility and the surrounding park area.

Manager agrees for itself, its permitted successors and assigns, and every permitted successor in interest that, subject to Unavoidable Delays, the Manager, within ___ months of the date of this Agreement or ___ months from receipt of all state, county, town permits and approvals, shall promptly commence and diligently pursue, to full completion, the development

of the Facility upon the Subject Property. In the event of Unavoidable Delays, the date for commencement and/or date for Substantial Completion shall be correspondingly set back by the same number of days involved in the period of Unavoidable Delays.

Manager shall not construct any permanent Improvements over or within the boundary lines of any easement for public utilities unless previously approved by the Town and any applicable utility company; the Town agrees to cooperate with the Manager in an attempt to obtain permission from any public or private agency or company to construct any permanent Improvements over easements if and to the extent required by the Lessee and necessary for better implementation of this Agreement.

Town reserves for itself and any public utility company, as may be appropriate, the right of ingress to and egress from the Subject Property at all reasonable times for the purposes of reconstructing, maintaining or servicing the public utilities, if any, located within the boundary lines of the Subject Property, and to operate, service, maintain, repair, replace and reconstruct the Public Improvements, including access to an existing recreation trail provided, however, that any entry shall, at all times, be conducted in a reasonable manner and without any undue interruption or interference with the business and activities of Manager.

If for any reason the structural support for any portion of the Facility is reduced below the support required for the structural integrity and safety of the balance of each set of any construction or improvement, whether above-grade or below-grade, the Manager shall promptly provide substitute adequate structural support. At the request of the Manager, the Manager shall engage the services of a licensed architect or structural engineer, reasonably acceptable to the Town, to determine the extent of the reduction and the adequacy of the remedial or substitute support which shall be constructed in accordance with plans and specifications prepared by the architect and reasonably acceptable to the Town.

In the event that the architect or structural engineer determines that substitute structural support is required in a portion of the Facility in which the structural support has been reduced and the Manager fails to commence the construction of substitute support within a reasonable time, as determined by the architect or structural engineer, or having commenced such construction, the Manager fails to proceed diligently to its completion, the Manager shall be in breach of the terms of this agreement. Upon such breach, and in addition to the remedies upon default set forth herein, the Town shall have the right to complete the construction of the substitute support and all costs and expenses incurred by the Town in connection with it shall be promptly due and payable to the Town from the Manager on demand and, if not paid by Manager on demand, shall be secured as a lien against any insurance proceeds payable to the Manager to secure the repayment of that sum of money.

5. **Operation and Management of the Facility.** The Manager agrees to manage and operate, at all times during the term of this Agreement, a first-class public indoor ice-skating rink for the benefit of all Town residents. The Facility shall include locker rooms. The facility will contain, and the Manager shall offer to all Town residents, but particularly its youth, a venue

for ice hockey leagues and training and other ice rink programs. The Riverhead Town Recreation Department, shall, at a minimum, be entitled to use of and access to the facility for programs and/or events as set forth in **Exhibit "C"** hereto. The Facility shall be open and accessible to the general public daily, for a minimum of 3 hours between the hours of 9:00 a.m. and 9:00 p.m. Manager shall be permitted to charge a fee for general public entry and shall waive such fee for residents of the Town of Riverhead upon presentation of a pass obtained by residents of Town from the Riverhead Recreation Department.

For the Manager and every other Person who is a beneficiary of the instant Agreement or to any part of the Subject Property and who is able to control the management or use of the Facility this Agreement, in addition to all other conditions and restrictions described herein, shall be subject to the following covenants and agreements.

(a) Devote the Facility and the property upon which it is situated only to those uses specified in this Agreement and allowed by applicable laws, rules and regulations;

(b) Not discriminate in violation of any applicable federal, state or local laws, ordinances or regulations upon the basis of race, color, religion, sex, or national origin in the sale, lease or rental, or in the use or occupancy of the Facility, or any Improvements erected or to be erected on it or on any part of such property and Facility.

The Manager acknowledges that it has examined the Subject Property and the location whereupon the Facility shall be erected and parking lot presently located at Veterans Park and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by the Town as to their condition or as to the use or occupancy which may be made of them. The Manager, upon donation of the Facility hereunder, assumes the sole responsibility for the condition the Facility and the Town, except as may be set forth otherwise herein, shall not be required at any time to furnish any facilities or services to the Subject Property or future Improvements or to make any repairs, replacements, changes (structural or otherwise), additions or alterations to the Subject Property, the Facility, or any other property of any kind, but the foregoing shall not be deemed to relieve the Town of its general municipal obligations, or its obligations respecting the Public Improvements.

The Manager shall throughout the term of this Agreement, at the Manager's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers (whether or not the same require structural repairs or alterations) and all other legal requirements, which may be applicable from time to time to the use of the Subject Property or the Facility, but the above shall not be deemed to relieve the Town of its general municipal obligations. The Manager shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Facility and property upon which same it situated.

The Manager shall have the right to contest by appropriate legal proceeding, without cost or

expense to the Town, the validity of any Legal Requirement of the nature referred to, and if by the terms of any legal requirement compliance may legally be held in abeyance without the incurrence of any lien, charge or liability of any kind against the title to the Facility.

6. **Utilities.** The Manager shall pay, or cause to be paid, all proper charges for gas, electricity, light, heat, water and power, for telephone, protective and other communication services, and for all other public or private utility services, which shall be used, rendered or supplied upon or in connection with the Facility or any part of it, at any time during the term of this Agreement, and the Manager will comply with all contracts relating to any services and will do all other things required for the maintenance and continuance of all services as are necessary for the proper maintenance and operation of the Facility. The Manager shall also at its sole expense procure any and all necessary permits, licenses or other authorization required for the lawful and proper installation and maintenance upon the Subject Property of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any utilities, services or substitutes to the Subject Property and the Town shall cooperate with and assist the Manager in such endeavor.

In case any charge, cost or expense for any of the above-mentioned utility services or for any of the other above-mentioned services shall not be paid when due and payable, the Manager shall be in breach of the terms and conditions of this Agreement and in addition to remedies and rights upon default as set forth herein below, the Town shall have the right, but shall not be obligated, to pay it, with the understanding that all amounts paid by the Town shall be repaid to the Town by the Manager immediately on rendition of a bill by the Town.

The Town shall not be liable for any failure of water supply, sewer, gas or electric current, or for any injury or damage to Person or property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snows which may leak or flow from the street, sewer, gas mains or from any part of the Facility, or leakage of gasoline or gas from pipes, appliances, sewer or plumbing works therein, or from any other place, or for interference with light or other incorporeal hereditaments, or caused by operations by or of any public or quasi-public work, but the above shall not be deemed to release or relieve the Town from any responsibility or liability that it would otherwise have, if any, in its capacity as a municipal corporation.

7. **Operating Budget.** Manager shall be responsible for securing all funds necessary to operate the facility as contemplated in this Agreement.

8. **Compensation.** Except the within license and agreement to manage and operate the Facility and collection of fees related to use of the Facility and except as may be otherwise stated herein, no consideration of any nature will be paid by the Town to the Manager for any services described herein.

Within sixty (60) days after the end of each fiscal year of the Manager, the Manager shall

throughout the term of this Agreement submit to the Town a copy of its balance sheet and statements of income and expense relating to the operation of the Facility by a duly certified by a firm of independent certified public accountants and prepared in accordance with generally accepted accounting principles.

Manager and Town agree that net revenue shall be determined and Manager covenants and agrees that such revenues shall be set aside and reserved for repairs, capital improvements to the Facility and/or future expansion in a manner to be agreed upon with particularity in a subsequent writing executed with the same formalities as the within agreement.

9. **Maintenance and Repair.** Manager shall be solely responsible for maintaining the Facility, including structural, mechanical, electrical and other building-related repairs. The Town shall be solely responsible for performing, at the Town's sole cost and expense, all landscaping, property and parking lot maintenance, as part of the Town's maintenance activities for Veterans Memorial Park.

The Manager shall throughout the term of this Agreement, at the Manager's sole expense, maintain in good, clean and orderly condition and repair the Facility. The Manager shall promptly, at the Manager's own expense, make to the Facility and any improvements there at all necessary repairs, renewals and replacements, interior and exterior, structural and nonstructural, whether made necessary or caused by fire or other cause or by ordinary wear and tear. All repairs, renewals and replacements shall be of good quality sufficient for the proper maintenance and operation of the Facility and improvements thereat and shall be constructed and installed in compliance with all legal requirements of all governmental authorities having jurisdiction and of the appropriate Board of Fire Underwriters.

The Manager covenants that it will continuously keep and maintain the Facility in a first-class condition commensurate with standards prevailing from time to time for buildings and Improvements used for the same purpose or purposes for which the Property may be used as provided in this Agreement and will so operate the same. The Manager, further, shall not permit the accumulation of waste or refuse matter, nor permit anything to be done upon the Subject Property or Facility which would invalidate or prevent the procurement of all insurance policies which may at any time be required pursuant to the provisions of Article. The Manager shall not obstruct or permit the obstruction of the streets or sidewalks, access ways or alleys adjoining the Property except as may be permitted by the Town or other municipal authorities having jurisdiction, and shall keep the Property clean and free of dirt, rubbish, snow and ice. All proceeds of insurance on account of any loss or damage shall, to the extent required, be applied on the cost of any repairs, renewals and replacements as provided for in this Section.

Nothing contained in this Agreement shall impose on the Town the obligation to make any repairs or expend any monies for the maintenance of the Facility or the renewal, replacement or repair of the Facility.

The Manager shall during the term of this Agreement, at the Manager's sole expense, do all

things necessary to remove any dangerous condition from time to time existing at the Facility and the property upon which same is situated including (without limiting the generality of the foregoing) promptly taking appropriate measures to prevent or repair any erosion, collapse or other unstable condition of the Facility. The Town shall during the term, at the Manager's sole expense, do all things necessary to remove any dangerous condition from time to time existing in the Public Improvements, without limitation, however, of the Manager's responsibilities with respect to the Facility.

The Manager shall not make or permit to be made any alteration of, addition to, or change in, the Facility, nor demolish all or any part of the Building without the prior written consent of the Town, which consent shall not be unreasonably withheld. In requesting consent the Manager shall comply with all applicable laws and ordinances, and shall submit to the Town detailed plans and specifications of the proposed work, an explanation of the needs and reasons for it, and a plan of full payment of the costs of it and the Town shall notify the Manager of its approval or objections, as the case may be, as promptly as possible after receiving the information, but not exceeding forty-five (45) days. The provision of this Section shall not apply to items which are strictly the Manager's obligation to finish, unless required by law or ordinance.

In the event of damage by fire or otherwise to the nonstructural elements of the Facility including any machinery, fixtures or equipment which are a part of the Facility located on the Subject Property, the Manager shall, within three (3) months after this damage and as much sooner as is reasonably possible, at the Manager's sole expense (but using, along with the Manager's own funds, insurance proceeds available for that purpose), either repair or replace the machinery, fixtures or equipment. In the event of damage by fire or otherwise to the structural elements of the Facility, the Manager shall, within four (4) months after the damage and as much sooner as is reasonably possible at the Manager's sole expense (but using, along with the Manager's own funds, insurance proceeds available for that purpose), repair and restore the Facility as completely as possible to the condition it was in immediately prior to the damage or, if the Manager so elects, replace, within eight (8) months after the damage and as much sooner as is reasonably possible at the Manager's sole expense (but using along with the Manager's own funds, insurance proceeds available for that purpose), the Facility (including all machinery, fixtures and equipment situated there) with a Facility of the same general size and character as the damaged Facility. In either event, the repairing, restoring or replacement shall be done in conformity with the construction of the initial Facility and any other Improvements on the Property.

All insurance proceeds recovered by any party on account of damage or destruction to the Facility, less the actual costs, if any, to the applicable party relating to recovery shall be applied by the parties to the payment of the cost to restore the Facility. The insurance proceeds shall be paid out, the work shall be performed, and the Manager shall make any other payments necessary to complete restoration of the Facility in accordance with the construction of the initial facility as described hereinabove.

10. **Additions or Expansion.** Manager shall not make any structural changes, additions to or expansion of the existing Facility without the prior agreement and further written agreement and approval of the Town of Riverhead which shall not be unreasonably withheld.

11. **Insurance and Indemnification.** The Manager shall, at the Manager's sole cost and expense but for the mutual benefit of the Manager and the Town, maintain the following insurance during the term of this Agreement:

- a. Prior to commencing construction, Manager shall procure and maintain at its own cost and expense appropriate business and liability insurance protection covering the construction of the Facility, including but not limited to the following:

Commercial General Liability with coverage not less than \$2,000,000 per occurrence \$3,000,000 aggregate for each annual policy period of combined single limit bodily injury and property damage. Such form shall include contractual liability, personal injury, advertising liability, and broad form property damage, products and completed operations coverages. This policy, Commercial General Liability, shall be primary and non-contributory, naming the Town as an additional insured.

Automobile Liability insurance (if any non-owned or owned vehicles are used by Manager in the performance of this Agreement) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage per occurrence. Town shall be named an additional insured.

Workers' Compensation and Employer's Liability insurance in compliance with all applicable New York State laws and regulations and Disability Benefits insurance, if required by law.

Manager shall furnish to Town, prior to commencing construction, declaration pages for each policy of insurance and certificates, other than a policy for commercial general liability insurance, and upon demand, a true and certified original copy of each such policy evidencing compliance with the aforesaid insurance requirements. All evidence of insurance shall provide for Town to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in the policy to which such evidence relates. It shall be the duty of Manager to notify Town immediately of any cancellation, nonrenewal, or material change in any insurance policy.

- b. Fire and extended coverage insurance on the Building (and those structures or parts of the Subject Property including the Building and other Improvements) in an amount which shall be sufficient to prevent the Town or the Manager from becoming coinsurers (determined in accordance with the provisions of any insurance policy then in effect) of any loss (but in no event in an amount less than 100% of the replacement cost of the Facility, at the time of the loss, without deduction for depreciation), with a maximum deductible for which Manager shall be responsible at the commencement of the

Agreement of \$50,000.00 (subject to annual increases based upon increases in the Consumer Price Index, from the commencement of the term to each anniversary), protecting against loss or damage by: (i) fire and lightning; (ii) the risks commonly included within the term "extended coverage" (including but not limited to windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke); and (iii) vandalism and malicious mischief, all as these terms are used in insurance policies from time to time issued by insurance companies licensed to do business by the State of New York.

- c. Comprehensive general public liability and property damage insurance, including but not limited to contractual liability insurance, protecting and indemnifying the Manager, the Town, and others designated by the Town against any and all claims (including all costs and expenses of defending against same) for bodily injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use) arising out of ownership, maintenance or use of the Facility and the Subject Property, the limits of which insurance shall be not less than \$2,000,000.00 Dollars in respect of bodily injury, sickness, disease or death of any one person resulting from any occurrence, \$2,000,000.00 in respect of damage or injury to or destruction of property from any one occurrence, and an excess "umbrella" policy (providing insurance in respect of the risks above-described for liability in excess of the limits specified above for these risks). The limits of the excess "umbrella" policy required shall not be less than a combined single limit of \$2,000,000.00. The Town shall have the right from time to time during the term of this Agreement reasonably to require the Manager to carry greater amounts of the insurance provided herein provided same is justified by recommendation of an insurance broker retained by the Town.
- d. Workers' compensation insurance and employer's liability insurance (with a minimum limit of \$1,000,000.00) covering all liability imposed under the provision of any workers' compensation law, employer's liability act or similar laws of the State of New York that may at any time or from time to time be enacted.
- e. In the event that any other type of legislation may be enacted imposing special liability upon the owner of property by virtue of its use for any special purposes, before the Manager shall so use the Building or any part of it, the Manager shall provide insurance in form and substance and with insurers and limits satisfactory to the Town indemnifying the Town, the Manager, and other persons the Manager may designate against any and all liability.
- f. Other insurance, in amounts and in form and substance and against insurable hazards as from time to time during the term of this Agreement (including but not limited to excavation and/or construction periods, alteration periods, razing or demolition periods and restoration periods in the event of damage or destruction or condemnation) may reasonably be required by the Manager and provided this insurance and amounts are consistent with insurance being issued by the insurance industry of the metropolitan area for buildings and operations of the type of building and operation of the Manager upon

the property whereat the facility is situated.

- g. The excess "umbrella" policy designated in this Section shall be so endorsed (to the extent that this insurance is available in normal channels) to provide coverage for losses in excess of the limits set forth herein.

All policies of insurance required hereunder shall name Town as an additional insured.

All public liability, workers' compensation and employer's liability policies shall be retained by the Manager. Except as otherwise specifically provided, all other policies of insurance required to be furnished shall be held by and be payable jointly to the Town and the Manager with the proceeds to be distributed in accordance with the terms of this Agreement. Insurance company certificates evidencing the existence of all of these policies of insurance shall be delivered to the Town. All policies of insurance required to be provided and obtained shall provide that they shall not be amended or canceled on less than 60 days' prior written notice to the Town and all insureds and beneficiaries of the policies. The Town shall have no obligation to pay premiums or make contributions to the insuring company or any other person.

Prior to commencing construction of the Facility the Manager shall deliver to the Town the applicable respective policies or insurance company certificates evidencing all policies of insurance and renewals required to be furnished. Prior to opening and operating the Facility, the Manager shall deliver to the Town the applicable respective policies or insurance company certificates evidencing all policies of insurance and renewals required to be furnished.

The Manager agrees to indemnify, defend and save harmless the Town against and from any and all claims by or on behalf of any person, firm or corporation, arising, other than due to the Town's gross or wanton negligence, from the conduct or management of or from any Work or thing whatsoever done in or about the Subject Property and the Facility. The Manager also agrees to indemnify, defend and save the Town harmless against and from any and all claims and damages arising, other than due to the Town's gross or wanton negligence, during the term of this Agreement from any condition of the Facility and Subject Property, or of any vaults, passageways or spaces appurtenant to it (except the Public Improvements, unless due to the Manager's negligence), or arising, other than due to the Town's gross or wanton negligence, from any breach or default on the part of the Manager to be performed, pursuant to the terms of this Agreement, or arising from any act or negligence of the Manager or any of its agents, contractors, servants, employees or licensees, or arising, other than due to the Town's gross or wanton negligence, from any accident, injury or damage whatsoever caused to any Person occurring during the term of this Agreement in or on the Subject Property, and from and against all costs, counsel and legal fees, expenses and liabilities incurred in any claim or action or proceeding brought, and in case any action or proceeding is brought against the Town by reason of a claim, the Manager upon notice from the Town shall at its expense resist or defend the action of proceeding by counsel reasonably satisfactory to the Town.

If the Manager is required to defend any action or proceeding pursuant to this Article to which action or proceeding the Town is made a party, the Town shall also be entitled to appear,

defend, or otherwise take part in the matter involved, at its election, and at the sole expense of the Manager (except the Manager shall not be obligated to pay counsel fees when an insurance carrier is obligated to and does defend the Town), by counsel of its own choosing, provided this action by the Town does not limit or make void any liability of any insurer of the Town or the Manager in respect to the claim or matter in question. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Agreement to indemnify the Town. The agreements of indemnity by the Manager do not apply to any claims of damages arising out of the failure of the Town to perform acts or render services in its municipal capacity.

12. **Default.** This Agreement may be terminated at any time by either party in the event the other party hereto is in breach of any of its duties, obligations, undertakings, covenants, conditions or agreements herein; provided, however, that in the event of any such breach that is capable of cure, the non-breaching party shall first give to the breaching party no less than ten (10) days-notice of its intent to terminate this Agreement and, unless the breaching party shall fully cure such breach within fifteen (15) days after receipt of such notice (or such longer period as it shall reasonably take to cure such breach, using due diligence), this Agreement shall terminate. Notwithstanding any such termination, the non-defaulting party shall be free to pursue any additional remedies at law or in equity it may have against the breaching party; provided, that neither party shall be liable for special, exemplary or consequential damages.

Without limiting any of the above, the Town shall be deemed beneficiaries of the covenants provided in this Agreement, both in its own right and for the purpose of protecting the interest of the community and other parties, whether public or private, in whose favor and for whose benefit the covenants shall be deemed provided. These covenants shall run in favor of the Town for the entire period during which each covenant shall be in force and effect. The Town shall also have the right, upon breach of any covenant, to exercise all rights or remedies and maintain actions or suits at law and equity or other proper proceedings to enforce the curing of any breach.

No failure on the part of the Town to enforce any covenant or provision contained in this Agreement, or any waiver of any right under it by the Town, unless in writing, shall discharge or invalidate the covenant or provision or affect the right of the Town to enforce it in the event of any subsequent breach or default. No covenant or condition of this Agreement shall be deemed to have been waived by the Town unless the waiver be in writing, signed by the Town or the Town's agent duly authorized in writing. Consent of the Town to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve the Manager from the obligation, wherever required under this Agreement, to obtain the consent of the Town to any other act or matter. The receipt by the Town of any consideration from Manager after the termination, in any manner, of the term demised, shall not reinstate, continue or extend the term demised, unless so agreed to in writing and signed by the Town and Manager.

If there is a default as defined in herein involving the failure of the Manager to keep the Facility in good condition and repair in accordance with the provisions of this Agreement, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Agreement or to take any other action required by the terms of this Agreement, then the Town shall have the right, but shall not be required, to make good any default

of the Manager. Nothing in this Agreement shall imply any duty upon the part of the Town to do any work which, under any provision of this Agreement, the Manager is required to perform, and the performance of it by the Town shall not constitute a waiver of the Manager's default in failing to perform it. The Town may, during the progress of any work elected to be performed by it on the Facility, enter with contractors, agents and servants and keep and store upon the Property and in the Facility or any part of it all necessary materials, tools and equipment. The Town shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of or to the Manager by reason of bringing materials, supplies and equipment into or through the Facility during the course of the work, and the obligations of the Manager under this Agreement shall not be affected in any manner whatsoever, provided that the Town uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business or other damage of or to the Manager.

To the extent not prohibited by law, all expenses, including reasonable attorney fees and court costs, incurred by the Town by reason of any default by the Manager (whether or not any proceeding is instituted) or in connection with any action or proceeding affecting this Agreement or the Facility and the property upon which same is situated, shall be paid to the Town by the Manager on demand. Conversely, the Manager shall be entitled to similar expenses incurred because of the Town default, without default on the Manager part.

All sums advanced by the Town at its option upon failure of Manager to pay such sums pursuant to the terms of this agreement and all necessary and incidental costs, expenses and attorney fees in connection with the performance of any acts, together with interest at the Prime Interest Rate per annum from the date of the making of advancements, shall be promptly payable by the Manager, in the respective amounts so advanced, to the Town. This reimbursement shall be made on demand and upon failure of Manager to remit sums so demanded within thirty (30) days, the Town shall be permitted to declare this Agreement cancelled and pursue any and all legal remedies to recover such sums.

Conversely, the Manager shall be entitled to receive from the Town prompt payment or reimbursement on any sums due and owing from the Town to the Manager, together with interest at the Prime Interest Rate. However, nothing contained in this Agreement shall entitle the Manager to withhold any of the non-tangible benefits and consideration due to the Town pursuant to this agreement, i.e. use of the Facility by residents and allocations of time for exclusive use by Riverhead Town Recreation Department.

13. **Assignments**. This Agreement cannot be assigned without the written consent of the other party.

14. **Easements**. The Town reserves to itself and to any public utility company the following permanent and perpetual rights in and to the Facility and the property upon which same is situated: For the respective interests of the Town and any public utility company in, to, over, under and across the Facility and the property upon which it is situated, as applicable, reasonable rights of ingress and egress to and from interests and areas necessary for the installation, operation, maintenance, repair, replacement, relocation, and removal of water lines,

sanitary and storm sewers, gas mains, electrical power lines, telephone lines, other utility lines and facilities and periodic inspection by the Riverhead Town Fire Marshal, provided that the exercise of any entry and other rights under this reciprocal easement grant shall not unreasonably interfere with the use and enjoyment by any party of interests, sites or areas or by anyone claiming by, through or under this party. At the time of execution, the Town has no knowledge of the existence of any private easements upon the property not of public record.

15. **Use by Third-Parties.** In addition to the principal uses of the Facility set forth in Section 5 above, the parties contemplate that the Facility shall be used by responsible, credit worthy third parties, pursuant to short-term licenses for the purposes of making additional programs available to the public and generating additional operating and debt service revenue for the Facility.

All such uses shall be consistent with the general purposes of the Facility as a recreational facility and in keeping with the incorporating/governing documents of the Manger, a copy of which is attached hereto as **Exhibit "B"** and which the Town acknowledges may be amended from time to time, provided that no such amendment shall materially alter or change the nature of the Manager's operations or Manager's not-for-profit status. Manager shall have the full responsibility and shall bear all legal and other expenses with respect to the negotiation, administration and, where appropriate, termination of licenses and use agreements with third parties for the use and occupancy of the Facility. Manager shall be entitled to retain all revenues therefrom for application to costs and expenses related to the operations of the Facility. Copies of all such leases shall be provided to the Town within thirty (30) days following its execution.

16. **General Provisions.**

a. **Attorney's fees.** If either party hereto brings an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to collect from the other party reasonable attorneys' fees, in an amount fixed by the court, together with court costs and expenses.

b. **Entire Agreement.** This Agreement represents the entire agreement between the parties and supersedes all prior oral and written proposals and communications. This Agreement shall be for the benefit of, and binding upon the heirs, successors and assigns of the parties hereto.

c. **Governing Law.** This Agreement shall be construed pursuant to and governed by the substantive laws of the State of New York.

d. **Authority.** The person or entity executing this Agreement on behalf of the Manager hereby represents and warrants that such person or entity is either the Owner of the Facility, has authority of the Owner of the Facility, or has the power of attorney from the Owner of the Facility and has the authority to legally bind Owner of the Facility to this Agreement and covenant donation of the Facility. This Agreement shall be executed on behalf of the Town of Riverhead by the Supervisor of the Town Riverhead upon adoption of a Resolution of the Riverhead Town Board authorizing same.

e. The Manager shall have no right or power to and shall not in any way encumber the title of the Town in and to the Subject Property.

g. **Captions.** The captions of this Agreement and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

h. **Conditions and Covenants.** All the provisions of this Agreement shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

i. **Entire Agreement.** This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors or assigns in interest.

j. No member, official, or employee of the Lessor shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any other entity or Person in which he or she is, directly or indirectly, interested. No member, official, or employee of the Town shall be personally liable to the Manager, its successors and assigns, or anyone claiming by, through or under the Manager or any successor in interest to the Facility, in the event of any default or breach by the Town or for any amount which may become due to the Manager, its successors and assigns, or any successor in interest to the Facility, or on any obligation under the terms of this Agreement.

k. The Manager agrees that during construction of the Facility hereunder: (a) it will not discriminate against any employee or applicant for employment because of race, creed, color or national origin and will take affirmative action to assure that applicants are employed and that employees are treated during employment without regard to race, creed, color or national origin; (b) post in conspicuous places, available to employees and applicants for employment, notices the form of which is to be provided by the Town setting forth provisions of this nondiscrimination clause; (c) in all solicitations or advertisements for employees placed by or on behalf of the Manager state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin; and (d) to send to each labor union or representative of workers with which the construction contractor has a collective bargaining agreement or other contract or understanding a notice, the form of which is to be provided by the Town, advising the union or representative of the Manager's commitments and posting copies of the notice in conspicuous places available to employees and applicants for employment.

l. Upon termination of this Agreement or any subsequent renewal or extension, Manager shall vacate the Facility whereupon Town shall maintain the right to exclusive operation of the Facility.

m. None of the terms and conditions set forth in this agreement shall be construed to create a landlord-tenant and/or principal – agent relationship as between the Manager and the Town.

17. **Modification.** None of the covenants, terms or conditions of this Agreement to be kept and performed by either party to this Agreement shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged and delivered by both Town and Manager.

18. **Notice.** Any notices, demands or consents to be provided by the parties under this Agreement shall be made in writing and shall be addressed to the parties at the addresses indicated herein below, or at such other address as such party shall specify to the other party in writing. Any written notice, demand or consent shall be effective three (3) business days after depositing such written demand, notice or consent in the United States mail, postage paid, return receipt requested, or upon receipt if personally delivered following address:

To Owner: Town of Riverhead
Attn: TOWN ATTORNEY
200 Howell Avenue
Riverhead, New York 11901
Phone No.: (631) 727-3200

To Manager: Peconic Hockey Foundation, Inc
P.O. Box 379
Wading River, NY 11792
Attn.:
Phone No. (631) _____

The Town has caused this Agreement to be executed in its name and on its behalf by the Town of Riverhead and attested to by the Town Clerk of the Town of Riverhead, Suffolk County, New York, and the Manager has signed as of the date and year written above.

Yvette Aguiar, Supervisor
Town of Riverhead

_____, President
Peconic Hockey Foundation