

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2011 -35**

**Being a By-law authorizing the execution of a Lease Agreement  
with Jeff Levy Investment Company  
(retail space within the United Communities Credit Union complex)**

**WHEREAS** under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

**AND WHEREAS** under Section 9. (1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

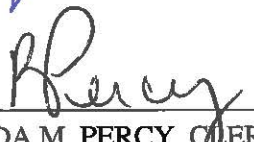
**AND WHEREAS** the Council of The Corporation of the Town of Amherstburg desires to enter into an agreement for the lease of a sports retail area within the United Communities Credit Union complex;

**NOW THEREFORE** the Council of The Corporation of the Town of Amherstburg enacts as follows:

1. That the Mayor and Clerk be authorized to execute a lease agreement between The Corporation of the Town of Amherstburg agrees to enter into an agreement with Jeff Levy Investment Company for the lease of a sports retail area within the United Communities Credit Union complex.
2. That the said agreement be attached hereto as Schedule "A" and forms part of this bylaw.
3. This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 22 day of February, 2011.

  
\_\_\_\_\_  
WAYNE HURST, MAYOR

  
\_\_\_\_\_  
BRENDA M. PERCY, CLERK

THIS LEASE MADE in duplicate this 11 day of May, 2011

**BETWEEN:**

Town of Amherstburg  
(hereinafter referred to as "**Landlord**") First Party

- and

(Jeff Levy Investment Company to as "**Tenant**") Second Party

**WHEREBY** the parties agree as follows:

### **ARTICLE 1 - INTERPRETATION**

#### 1.1 Defined Terms

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following words and phrases have the following respective meanings:

- (a) "Applicable Laws" means all laws, statutes, regulations, orders, by-laws, rules, declarations, ordinances, directives, requirements and directions of all federal, provincial, municipal, local and other governmental and quasi-governmental authorities, departments, commissions and boards having jurisdiction;
- (b) "Building" means The United Communities Credit Union (Recreation) Complex located on the Lands;
- (c) "Building Systems" means: (i) the heating, ventilating and air-conditioning equipment and facilities and all other systems, services, installations and facilities from time to time installed in or servicing the Property (or any portion thereof) including, but not limited to, the elevators and escalators and the following systems, services, installations and facilities: mechanical (including plumbing, sprinkler, drainage and sewage), electrical and other utilities, lighting, sprinkler, life safety (including fire prevention, communications, security and surveillance), computer (including environmental, security and lighting control), ice and snow melting, refuse removal, window washing, and music; and (ii) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them;
- (d) "Claims" means claims, losses, actions, suits, proceedings, causes of action, demands, damages (incidental, direct, indirect, special, consequential or otherwise), fines, duties, interest, penalties, judgments, executions, liabilities, responsibilities, costs, charges, payments and expenses including, without limitation, any professional, consultant and legal fees (on a solicitor and his/her own client basis);
- (e) "Collateral" is defined in Section 14.3 herein;
- (f) "Commencement Date" shall be determined in accordance with Section 2.2

of this Lease;

- (g) "Common Areas" means those areas, facilities, utilities, improvements, equipment and installations within, adjacent to or outside the Project which serve or are for the benefit of the Project, which do not comprise part of the Premises and which, from time to time, are not designated or intended by the Landlord to be for the Landlord's exclusive use, and are not designated or intended by the Landlord to be leased to the Tenant or any other tenants of the Project. Without limiting the generality of the foregoing, Common Areas include all corridors, hallways, lobbies and stairwells, all walkways and sidewalks, all landscaped and planted areas, the roof and exterior walls of the Project, exterior and interior glazing, exterior and interior structural elements and walls of the Project, common washrooms, all parking and loading areas and all entrances and exits thereto and all structural elements thereof, all access ways, truck courts, driveways, delivery passages, loading docks and related areas, all electrical, telephone, meter, valve, mechanical, mail, storage, service and janitorial rooms, fire prevention, security and communication systems, and generally all areas forming part of the Project which do not constitute rented or rentable premises;
- (h) "Early Occupancy Date" is defined in Section 2.6 herein;
- (i) "Landlord" means the first party, and its authorized representatives and agents. In any section of this Lease which contains a release or other exculpatory language in favor of Landlord, the term "Landlord" also means the directors, officers, servants, employees and agents of Landlord, and Landlord, solely for the purpose of any such section, is the agent or trustee of, and for the benefit of, each of them;
- (j) "Lands" means the lands shown outlined in heavy black on the site sketch attached hereto as **Schedule 1.1(j)**, forming part of the United Communities Credit Union Complex in Amherstburg, Ontario
- (k) "Lease" means this Lease and any amendments, modifications or additions in writing hereto, and includes any schedules, appendices, riders and other documents, if any, attached hereto, or otherwise intended to form part of this Lease;
- (l) "Lease Year" means each consecutive period of three hundred and sixty-five (365) days (or three hundred and sixty-six (366) days in the case of a Lease Year which includes the month of February in a leap year), the first Lease Year commencing on the Commencement Date and ending on the day before the anniversary of the Commencement Date, and each successive Lease Year commencing on the anniversary of the Commencement Date;
- (m) "Leasehold Improvements" means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant, including doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding trade fixtures and furniture and equipment not in the nature of fixtures;
- (n) "Normal Business Hours" means normal business hours for the Building as determined by Landlord from time to time and which, unless otherwise determined by Landlord, shall be from 8:00 a.m. to 12:00 a.m. Monday through Friday, and 7:00 a.m. to 12:00 a.m. on weekends and holidays, all subject to Applicable Laws;
- (o) "Owner" means the Town of Amherstburg as Owner of the Project.
- (p) "Parking Facilities", if any, means those portions of the Project designated by the Landlord for parking;



- (q) "Person" includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination or aggregation of any of them;
- (r) "Premises" means part of the first floor of the Building, shown outlined in heavy black on the floor plan attached hereto as **Schedule 1.1(p)**. The purpose of Schedule 1.1(p) is to show the approximate location of the Premises and the contents of Schedule 1.1(p) are not intended as a representation as to the precise size or dimensions of the Premises or any other aspects of the Building or the Project;
- (s) "Project" means the improvements constructed on the Lands, including the Building, the Common Areas (whether on or adjacent to the Lands), the Parking Facilities, if any, and any other buildings on the Lands;
- (t) "Rent" means all amounts payable by the Tenant to the Landlord under this Lease, except as may be otherwise expressly specified herein;
- (u) "Rental Taxes" means any and all taxes or duties imposed upon the Landlord or the Tenant measured by or based in whole or in part upon the Rent payable under the Lease, whether existing at the date hereof or hereinafter imposed by any governmental authority, including, without limitation, goods and services tax, value added tax, retail sales tax, property tax, federal sales tax, excise taxes or duties, or any tax similar to any of the foregoing;
- (v) "Rules and Regulations" means the rules and regulations promulgated by the Landlord from time to time pursuant to the terms of this Lease;
- (w) "Security Interest" is defined in Section 14.3 herein;
- (x) "Tenant" means the second party and any Person mentioned as Tenant in this Lease, whether one or more. Any reference to "Tenant" in any Section of this Lease includes, where the context allows (as in, by way of example, but without limitation, Sections 7.3, 8.4. and 8.5), the directors, officers, servants, employees, contractors, agents, invitees and licensees of Tenant and all other Persons over whom Tenant: (i) may reasonably be expected to exercise control; and (ii) is in law responsible, and Tenant, solely for the purpose of any such section, is the agent or trustee of, and for the benefit of, each of them;
- (y) "Term" means the term of this Lease as set forth in Section 2.2;
- (z) "Transfer" means an assignment of this Lease in whole or in part, a sublease of all or any part of the Premises, any transaction whereby the rights of the Tenant under this Lease or to the Premises are transferred to another Person, any transaction by which any right of use or occupancy of all or any part of the Premises is shared with or conferred upon any Person, any mortgage, charge or encumbrance of this Lease or the Premises or any part thereof, or any transaction or occurrence whatsoever which has changed or will change the identity of the Person having lawful use or occupancy of any part of the Premises; and



(aa) "Transferee" means any Person to whom a Transfer is or is to be made;

## 1.2 Obligations as Covenants

Each obligation or agreement of Landlord or Tenant expressed in this Lease, even though not expressed as a covenant, is for all purposes considered to be a covenant.

## 1.3 Number, Gender, Effect of Headings:

Words importing the singular number shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this Lease into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Lease.

## 1.4 Partial Invalidity

If for any reason whatsoever any term, covenant or condition of this Lease, or the application thereof to any Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition: (a) is deemed to be independent of the remainder of this Lease and to be severable and divisible there from and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of this Lease or any part thereof; and (b) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

## 1.5 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein and this Lease constitutes the entire agreement duly executed by the parties hereto, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties hereto.

## 1.6 Governing Law

This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

### 1.7 Time of the Essence

Time is of the essence of this Lease and every part hereof, except as herein otherwise provided.

### 1.8 No Partnership

Nothing contained herein shall be deemed or construed by the parties hereto, nor any third party, as creating the relationship of principal and agent, or a partnership, or a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

### 1.9 Contra Proferentum

The Landlord and the Tenant understand, acknowledge and agree that: (a) this Lease has been freely negotiated by both parties; and (b) in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

## ARTICLE 2 -DEMISE AND TERM

### 2.1 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant leases from the Landlord the Premises.

### 2.2 Term

The Term shall commence on the date (the "January 02, 2011") which is the later of: (a) the date on which the Tenant opens for business; or (b) January 02, 2011, and shall run for a period of **five (5) years** and shall end on the date which is one (1) calendar day before the fifth (5th) anniversary date of the Commencement Date, unless terminated earlier pursuant to the provisions of this Lease. There shall be three successive five year extensions to this lease subject to both parties agreement on terms and conditions of the extensions. The terms and conditions for each renewal period shall be the same as those contained herein, except for the Rent fee.

The parties agree in the event they can not reach agreement as to the rent then the rent shall be the fair market value rent for the premises and either party may direct that such rent shall be determined in accordance with the provisions of the Commercial Arbitration Act of the Province of Ontario.

When not in default under the terms of this Lease, the Tenant shall have the option to terminate this Lease on delivering written notice to the Landlord of the exercise of this right not less than thirty (30) days prior to the Termination Date, as described in the Notice of Termination.

Prior to the Termination Date, the Tenant shall pay to the Landlord by certified cheque, an amount equal to the Rent apportioned to the Termination Date together with all other amounts due and owing by the Tenant to the Landlord.

The Tenant shall deliver up vacant possession of the Premises to the Landlord in the same condition and state of repair as the Tenant is required to maintain the Premises throughout the Term and in accordance with its obligations in Section 7.1.

Effective on the Termination Date, this Lease will be fully and completely ended as at that date and the Tenant's obligation to pay Rent shall cease provided that the Tenant has complied with all its obligations under this Lease.

In the event that the Tenant has failed to comply with all of its obligations under this Lease, and in addition to all other remedies that the Landlord may have against the Tenant in equity and in law, the Tenant shall continue to be liable for the Rent under this Lease until the Tenant has complied with its obligations under this Lease.

### 2.3 Acceptance of Premises

Save and except for any work to be performed by the Landlord as specifically set out herein, Tenant accepts the Premises in the state and condition in which they are received from Landlord on an "as is" basis, and Tenant's entering into possession of the Premises shall be conclusive evidence that the Premises were in good and satisfactory condition at that time.

### 2.4 Landlord's Obligation

Subject to Section 13.2, Landlord shall deliver the Premises to the Tenant on the Early Occupancy Date in substantially complete base building condition in accordance with Schedule 2.4 attached hereto.

### 2.5 Delayed Possession

If for any reason Landlord is delayed in delivering, or is unable to give, possession of all or any part of the premises to Tenant on or before the Commencement Date, then: (a) Tenant shall take possession of the Premises on the date when Landlord delivers possession of all of the Premises, which date shall be conclusively established by notice from Landlord to Tenant; (b) this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any Claims resulting from any delay in delivering possession of the Premises to Tenant; (c) the Term shall commence on the Commencement Date; (d) unless such delay is caused by or attributable to Tenant, its employees, servants, agents or independent contractors, no Rent shall be payable by Tenant for the period prior to the date on which Landlord delivers possession of all of the Premises, unless Tenant elects to take possession of a part of the Premises, if possession of such part is available from Landlord, and Landlord consents thereto, whereupon Rent shall be payable in respect of such part from the date such possession is so taken; and (e) the expiry date of this Lease shall remain unchanged.

### 2.6 Early Occupancy

Subject to Section 13.2, the Tenant shall be permitted to occupy the Premises as soon as reasonably possible in order to complete the Initial Improvements (the date the Tenant actually occupies the Premises being hereinafter referred to as the "**Early Occupancy Date**"). From the Early Occupancy Date to the Commencement Date (the "**Early Occupancy Period**") the Tenant shall be a tenant of the Landlord subject to all of the terms and conditions contained in this Lease, provided however that Tenant shall not be liable to pay any Rent during the Early Occupancy Period. The Tenant hereby covenants and agrees that the Initial Improvements shall be completed as quickly and expeditiously as possible. The Landlord shall be entitled to enter the Premises and inspect the status of the Initial Improvements and complete any repairs to the Premises or Building which may be required at any time during the Early Occupancy Period.



## 2.7 Overholding

If, at the expiration of the Term, the Tenant shall continue to occupy the Premises without further written agreement, there shall be no tacit renewal of this Lease, and the tenancy of the Tenant thereafter shall be from month to month only, and may be terminated by either party on one (1) month's notice. Rent shall be payable in advance on the first day of each month equal to the sum of one hundred and fifty percent (150%) of the monthly installment of Basic Rent payable during the last year of the Term and otherwise on the same terms and conditions of this Lease which shall, so far as applicable, apply to such monthly tenancy.

## ARTICLE 3 – RENT

### 3.1 Covenant to Pay

Tenant shall pay, as and when due, all Rent in accordance with the terms and conditions of this Lease.

### 3.2 Basic Rent

The Tenant covenants and agrees to pay, from and after the Commencement Date, annual Basic Rent in the following sum:

**(\$8,000.00) Dollars per year plus HST of Gross Rentable Area, which is approximately 695 square feet**, calculated as approximately **\$666.67** monthly throughout the Term of the Agreement. Rent shall be increased annually by the most recent annual Consumer Price Index for Windsor-Essex Region throughout the term of the agreement and adjusted on the anniversary date of this agreement.

### 3.3 Taxes

The Land has been designated as a municipal capital facility in accordance with Section 110(6) of the Municipal Act, 2001.

### 3.4 Payment Method

The Landlord may at any time, and from time to time, require the Tenant to provide to the Landlord either: (a) a series of monthly post-dated cheques, each cheque in the amount of the monthly installment of Rent; or (b) authorization and documentation required to automatically debit the Tenant's bank account for such amounts. The Tenant agrees that if any of the Tenant's cheques are returned for any reason, the Tenant shall pay to the Landlord upon receipt of the Landlord's invoice for same, a minimum administrative fee of not less than Fifty Dollars (\$50.00).

### 3.5 Rent Past Due

If the Tenant shall fail to pay any Rent when the same is due and payable, such unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum (calculated monthly at the rate of one and one-quarter percent (1.25%)), such interest to be calculated from the time such Rent becomes due until paid by the Tenant.

### 3.6 General

Except as expressly set forth in this Lease, all amounts payable by the Tenant to the Landlord hereunder shall be deemed to be Rent. The Tenant shall pay Rent without abatement, deduction or set-off, except as expressly provided herein, to the Landlord at the office of the Landlord, or to such other person and at such address as the Landlord may advise in writing. The Tenant shall pay items of Rent of a recurring nature (including, without limitation, Basic Rent) in advance

on the first day of each month of the Term and shall pay other items of Rent within fifteen (15) days of the delivery of an invoice. The Landlord shall estimate and may re-estimate, items of Rent of a recurring and variable nature for each Fiscal Year and advise the Tenant thereof.

### 3.7 Partial Periods

If the Term commences on any day other than the first day of the month, Rent for the fractions of a month at the end of the Basic Rent Free Period (as defined in Section 3.8) shall be calculated on a *pro rata* basis and shall be payable with the first rental payment.

## ARTICLE 4 -UTILITIES AND BUILDING SYSTEMS

4.1 Utilities Included in the monthly rental lease with exception of telephone which will be arranged directly by tenant.

### 4.2 Above-Normal Utilization

Landlord and Tenant agree that, subject to Section 4.2, all charges, costs, accounts and other sums payable by reason of the supply of utilities and services to the Premises are included in Basic Rent.

If there are special circumstances within the Premises causing utilization of any utilities or services in excess of that reasonably expected for the use of the Premises (including, without limitation, requirements outside of Normal Business Hours), the Landlord may, in its sole discretion, designate a professional engineer or other consultant to review such above-normal utilization and determine the extent thereof on a monthly basis and, upon such determination and delivery of a copy of the engineer's or consultant's report to the Tenant, the Landlord may, if such report so indicates, increase the Tenant's monthly payments of Rent by an amount equal to such above-normal utilization as long as such utilization shall continue. The Tenant shall pay to the Landlord, as long as such utilization shall continue, the amount determined by the Landlord, in its sole opinion and in accordance with the engineer's or consultant's report, to be attributable to such above-normal utilization. The Tenant shall also pay to the Landlord any extra insurance costs resulting from such above-normal utilization.

### 4.3 No Overloading

The Tenant will not install any equipment which would exceed or overload the capacity of the utility facilities in the Premises or the other facilities in the Property, and agrees that if any equipment installed by the Tenant shall require additional facilities, such facilities shall be installed, if available, and subject to the Landlord's prior written approval thereof (which approval may not be unreasonably withheld), at the Tenant's sole cost and expense in accordance with plans and specifications to be approved in advance by the Landlord, in writing.

### 4.4 No Liability

In no event shall the Landlord or the Owner be liable for any injury to the Tenant, its employees, agents or invitees, or to the Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Premises.

## ARTICLE 5 -CONTROL AND OPERATION BY LANDLORD

### 5.1 Building Operation and Repair

The Landlord shall operate, maintain and repair the Building and any Building Systems serving the Premises, to the extent required to keep the Building and Building Systems in a state of good repair and maintenance in accordance with normal property management standards for a similar building in the vicinity. For greater certainty, however, the Landlord's obligations shall not extend to any matters that are the responsibility of the Tenant herein.

### 5.2 Use of Common Areas

The Tenant shall have the right of non-exclusive use, in common with others entitled thereto, for their proper and intended purposes of those portions of the Common Areas intended for common use by other tenants and users of the Project, provided that such use by the Tenant shall always be subject to such reasonable Rules and Regulations as the Landlord may from time to time determine. At times other than during Normal Business Hours, the Tenant and the employees of the Tenant and persons lawfully requiring communication with the Tenant shall have access to the Property only in accordance with the Rules and Regulations and other security requirements of the Landlord.

### 5.3 Control of Common Areas and Project

The Common Areas shall at all times be subject to the exclusive management and control of the Landlord. Without limitation, the Landlord may, in its operation of the Project, do any or all of the following: regulate, acting reasonably, all aspects of loading and unloading and delivery and shipping, and all aspects of garbage collection and disposal; designate employee parking areas or prohibit the Tenant and its employees from parking in or on the Project; and do and perform such other acts in and to the Project as, using good business judgment, the Landlord determines to be advisable for the proper operation of the Project. The Landlord reserves the right to lease parts of the Common Areas from time to time, so long as the use does not conflict with **Section 14.1 Sports Retail Exclusivity Rights**.

The Landlord reserves the right to alter the layout or configuration of and/or reduce or enlarge the size of the Common Areas and/or the Building, to cease to treat as part of the Project any buildings or lands now forming part of the Property and/or to add additional lands or buildings to the Project, and to make other changes to the Project as the Landlord shall from time to time reasonably determine. Despite anything else contained in this Lease, the Landlord has no liability for any diminution or alteration of the Common Areas that occurs as a result of the Landlord's exercise of its rights under this Section 5.3 or elsewhere in this Lease. The Tenant shall not be entitled to compensation or a reduction or abatement of Rent for such diminution or alteration. Further, no such diminution or alteration of the Common Areas shall be deemed to be a constructive or actual eviction of the Tenant or a default by the Landlord of any obligation for quiet enjoyment contained in this Lease or provided at law.

### 5.4 Tenants rights to use Common Areas

The Tenant will have the right to use the facility loading doors daily at a time scheduled with the landlord. Such use includes the ability to use facility dollies or carts to move deliveries to and from the Sports Retail space. The Tenant will have the right to empty garbage into the facility refuse dumpsters daily.

The tenant will have the right to use the facility janitorial closet to fill and dump the mop bucket. Space therein will be provided for storage of the cleaning supplies (mop, broom, mop bucket and cleaning products) for the Tenant's use.



#### 5.5 Name of Project

The Landlord may designate the name of the Building and the Project and upon not less than thirty (30) day's notice may change the name of either the Building or the Project. The Tenant shall only refer to the Building and the Project by their designated names and shall only use such names as its business address.

#### 5.6 Regulations

The Tenant and its employees and all persons visiting or doing business with it on the Premises shall be bound by and shall observe the Rules and Regulations attached to this Lease as **Schedule 5.6**, and any further and other reasonable Rules and Regulations made hereafter by the Landlord of which notice in writing shall be given to the Tenant. All such Rules and Regulations shall be deemed to be incorporated into and form part of this Lease, as long as these Rules and Regulations do not harm the ability of the tenant to operate a sustainable business on the premises.

### ARTICLE 6 -USE OF PREMISES

#### 6.1 Use of the Premises

Tenant shall use the Premises solely for sport retail, limited to the sale of recreation and sporting equipment and accessories and skate sharpening and repairs typically sold at Sport Retail Stores.

Tenant shall not use or permit or suffer the use of the Premises or any part thereof for any other business or purpose than as set forth above. In connection with the business to be conducted by Tenant on the Premises, Tenant shall use only the advertised name "**JLI Sports Ltd.**" (which Tenant represents it has the exclusive right to use) and shall not change the advertised name of the business to be operated in the Premises without the prior written consent of Landlord. Tenant acknowledges that it has satisfied itself that the Premises can be used and are zoned for the purpose stated herein. Tenant agrees that it will not permit all or any part of the Premises to be used contrary to any restrictions registered against and running with title to the Lands.

#### 6.2 Conduct of Business

The Tenant shall, throughout the Term, conduct continuously and actively the business set out in Section 6.1 in the Premises during Sports Retail Business Hours, which shall be 4:00pm – 10pm Monday thru Friday, and 8:00am thru 10:00pm Saturday, Sunday and Holidays. The Sports Retail Business Hours will be posted clearly on the premises, and will only be modified if the Tenant determines that business conditions warrant a change. Notwithstanding the foregoing, the Tenant shall not be required to carry on business when prohibited by a governmental law or by-law regulating the hours of business.

In the conduct by the Tenant of its business at the Premises, the Tenant shall: operate its business in a manner which is in keeping with the theme and nature of the entire Project; maintain at the Premises an adequate stock and an adequate sales force to serve properly all customers of its business; warehouse, store or stock in the Premises only such goods, wares and merchandise as the Tenant intends to offer for sale in the Premises; use for office, clerical or other non-selling purposes, only such reasonable minimum amount of space at the Premises as may be required for the conduct of the Tenant's business from time to time; and maintain all food preparation areas in a first-class state of cleanliness in accordance with all applicable health and safety regulations and the Landlord's reasonable requirements.

All products (including, without limitation, all food and beverages) sold by the Tenant in the course of its business at the Premises shall be of first-class quality, having regard to the nature of the products sold, and shall comply with all applicable health and safety regulations and the Landlord's reasonable

requirements. All prices shall be commercially reasonable, having regard to the price of similar products sold in similar establishments in Halifax Regional Municipality.

Without limiting the generality of the foregoing or any other provision of this Lease, the Tenant shall neither use nor permit any part of the Premises to be used for or in connection with any vending machines or other coin operated machines, entertainment or games machines or any other mechanical or electrical serving or dispensing machines or devices whatsoever unless expressly permitted in writing by the Landlord, in its sole discretion.

### 6.3 Radius Restriction

The Tenant shall not, during the Term, directly or indirectly whether as an owner, partner, shareholder, principal, agent, employee or independent contractor or otherwise, engage in or participate in or be a holder of any security of any nature whatsoever of, or be a lender to or an owner of any debt of, or furnish any financial aid or other support or assistance of any nature whatsoever to any similar business enterprise or undertaking which in any manner or degree is competitive with the use of the Premises permitted by Section 6.1, if such competitive business enterprise or undertaking is in whole or in part conducted from premises situate within a distance of one (1) kilometre from any part of the Project. If the Tenant shall breach the covenant contained in this Section 6.3, then in addition to any other rights and remedies of the Landlord under this Lease or any Applicable Laws, the Landlord may, at its option, terminate this Lease upon thirty (30) days' written notice to the Tenant. Provided, however, that this Section 6.3 shall not apply to any business enterprise or undertaking in existence as of the date of this Lease.

### 6.4 Compliance with Applicable Laws

The Tenant shall, at its own expense, comply with all Applicable Laws affecting the Premises or the use or occupation thereof, any equipment or chattels located upon the Premises, and the Tenant's business conducted from the Premises, including, without limitation, police, fire, health and safety regulations and requirements of the fire insurance underwriters. Without limiting the generality of the foregoing:

- (a) where, during the Term, the Tenant has, through its use or occupancy of the Premises, caused or permitted a release of a contaminant at, from or to the Premises, the Tenant shall immediately clean up such contaminant from the Premises, and any other affected areas, at the Tenant's sole cost and expense; and
- (b) on the termination of the Lease for any reason, the Tenant shall remove, at its expense, any contaminant or contamination which, through the Tenant's use or occupancy of the Premises, it has brought to or created at the Project.

### 6.5 Waste, Nuisance, Overloading

The Tenant shall not do or suffer any waste, damage, disfiguration or injury to the Premises, nor permit or suffer any overloading of the floors, roof deck, walls or any other part of the Property, and shall not use or permit to be used any part of the Premises for any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business, and shall not cause or permit any nuisance in, at or on the Premises. The Tenant shall follow local by-laws with respect to waste management and source separation of waste. The use by the Tenant of electrical, plumbing, heating and other services shall at no time exceed the capacity of the wiring, mains, pipes or conduits on the leased premises or the fixtures or equipment within the leased premises so as to constitute a hazard.

## ARTICLE 7 - MAINTENANCE, REPAIR AND CLEANING OF PREMISES

### 7.1 Tenant's Obligations

Except as set out in this Article 7, the Tenant shall, at its own expense and cost, clean, operate, maintain and keep in good and substantial repair, order and condition the Premises shown outlined in heavy black on **Schedule 1.1p** attached hereto. All repairs shall be in all respects equal in quality and workmanship to the original work and materials in the Premises and shall meet the requirements of all authorities having jurisdiction, and the insurance underwriters. Tenant shall, at its own cost and expense, maintain all trade fixtures, equipment and chattels in a first class state of cleanliness and repair and shall not remove any trade fixtures, equipment or chattels from the Premises unless it replaces such trade fixtures, equipment or chattels with similar trade fixtures, equipment or chattels (as the case may be). Without limiting the generality of the foregoing, the Tenant shall implement a cleaning schedule for the Sports Retail Area, which shall be subject to Landlord's approval (not to be unreasonably withheld). For further clarification, any repairs required to the glazing surrounding the premises (interior and exterior) are the Landlord's responsibility and cost.

### 7.2 Inspection and Repair on Notice

The Landlord, its servants, agents and contractors shall be entitled to enter upon the Premises at any time without notice for the purpose of making emergency repairs, and during Normal Business Hours on reasonable prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Premises or to the Project, or for the purpose of having access to the under floor ducts, or to access panels to mechanical shafts (which the Tenant agrees not to obstruct). The Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. The Landlord, its servants, agents and contractors may at any time, and from time to time, on reasonable prior written notice, enter upon the Premises to remove any article or remedy any condition which, in the opinion of the Landlord, would likely lead to the cancellation of any policy of insurance. The Landlord will take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Tenant's business and to minimize interference with the Tenant's use and enjoyment of the Premises.

### 7.3 Repair Where Tenant At Fault

Notwithstanding any other provision of this Lease, if the Building, including the Premises, the boilers, engines, controls, pipes and other apparatus used for the purpose of heating or air-conditioning the Building, the water and drainage pipes, the electric lighting, any other equipment or the roof or outside walls of the Building are put in a state of disrepair or are damaged or destroyed through the negligence, carelessness or misuse of the Tenant, its servants, agents, employees or anyone permitted by it to be in the Building, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant and paid to the Landlord forthwith on demand as Rent, plus a sum equal to fifteen percent (15%) thereof for overhead.

### 7.4 Leasehold Improvements

The Tenant will not make or erect in or to the Premises any installations, alterations, additions or partitions without first submitting drawings and specifications to the Landlord and obtaining the Landlord's prior written consent. The Tenant must further obtain the Landlord's prior written consent to any change or changes in such drawings and specifications. Such work shall be performed by certified contractors with the appropriate and current credentials, insurance requirements, OH&S, etc. engaged by the Tenant (and approved by the Landlord), but in each case only under a written contract approved in writing



by the Landlord and subject to all reasonable conditions which the Landlord may impose, provided nevertheless that the Landlord may, at its option, require that the Landlord's contractors be engaged for any structural, mechanical or electrical work. No Alterations by or on behalf of the Tenant shall be permitted which may weaken or endanger the structure or adversely affect the condition or operation of the Premises or the Building or diminish the value thereof, or restrict or reduce the Landlord's coverage for municipal zoning purposes. Any changes to the lighting undertaken by the Tenant as part of an approved alteration must result in energy efficient lighting compatible with the Property standard. The Tenant shall submit to the Landlord's reasonable supervision over construction and promptly pay to the Landlord's or the Tenant's contractors, as the case may be, when due, the cost of all such work and of all materials, labour and services involved therein and of all decoration and all changes to the Property, its equipment or services, necessitated thereby. Without limiting the generality of the foregoing, any work performed by or for the Tenant shall be:

- (a) performed in a good and workmanlike manner in accordance with the approved drawings and specifications, all applicable codes and regulations, and the best standards of practice;
- (b) subject to the reasonable supervision and direction of the Landlord; and,
- (c) completed as expeditiously as possible with first class new materials.

#### 7.5 Initial Improvements

Tenant shall complete the Initial Improvements at the Tenants' cost during the Early Occupancy Period. Tenant shall provide Landlord with all plans and drawings for the Initial Improvements (hereinafter referred to as "**Tenant Specifications**") prior to commencement of any work, or 45 days after the Landlord provides detailed drawings of the premises including floor-plan and elevations, whichever is later. All Tenant Specifications shall be subject to Landlord's approval, not to be unreasonably withheld.

The Tenant's contractors shall complete the Initial Improvements in accordance with the Tenant Specifications, as approved by Landlord, no later than November 15, 2010, or 30 days after the Early Occupancy Date, whichever is later. The Tenant shall ensure that the Tenant's contractors charge reasonable commercial rates for the Initial Improvements consistent with commercial construction practice in the area and shall perform such work in a professional and expeditious manner using first-class materials.

The Landlord shall be entitled to enter upon the Premises at all reasonable times to monitor and inspect the installation of the Initial Improvements, but shall have no obligation to manage or supervise the installation thereof. The Tenant shall advise the Landlord on a regular basis as to the progress of the installation of the Initial Improvements. In the event that any of the Initial Improvements are not installed in accordance with the Tenant Specifications (as approved by Landlord, or in the event that Tenant or its contractors fail to observe any requirement of this Section 7.5, then without limiting any other remedy available to Landlord, the Landlord may require that construction cease until any breach is remedied and, if applicable, that the Initial Improvements installed other than in accordance with the Tenant Specifications be dismantled or removed and re-installed in accordance with the Tenant Specifications, all at Tenant's sole cost and expense.

All costs of the Improvements shall be paid by the Tenant when due.

#### 7.6 Signs

The Tenant may install signage on the interior of the Sport Retail Premises and perforated vinyl sports images / logos on the interior windows as may be

approved by the Landlord, such approval not to be unreasonably withheld. Proofs of these signs will be provided to the Landlord at the same time as the **Tenant Specifications**. All Tenant signage shall remain the property of the Tenant, and the Tenant shall remove such signage at the end of the Term and make good all damage caused by such installation and removal.

#### 7.7 Construction Liens

If any construction or other lien or order for the payment of money shall be filed against the Property by reason of or arising out of any labour or material furnished to the Tenant or to anyone claiming through the Tenant, the Tenant, within five (5) days after receipt of notice of the filing thereof, shall cause the same to be discharged by bonding, deposit, payment, court order or otherwise. The Tenant shall defend all suits to enforce such lien, or orders, against the Tenant, at the Tenant's sole expense. The Tenant hereby indemnifies the Landlord and the Owner against any expense or damage incurred as a result of such liens or orders. If the Tenant shall fail to discharge any lien, then in addition to any other right or remedy of the Landlord, the Landlord may, but it shall not be so obligated, discharge the lien by paying the amount claimed to be due into Court and the amount paid by the Landlord together with all costs and expenses including solicitor's fees incurred for the discharge of the lien shall be due and payable by the Tenant to the Landlord as Rent on demand.

#### 7.8 Removal of Improvements and Fixtures

All Leasehold Improvements shall immediately upon their placement become the Landlord's property, without compensation to the Tenant, except as otherwise permitted by this Lease. No Leasehold Improvements shall be removed from the Premises by the Tenant, either during or upon the expiry or earlier termination of the Term except that the Tenant shall, at its sole cost, remove such of the Leasehold Improvements as the Landlord shall require to be removed, such removal to be completed on or before the end of the Term.

The Tenant shall, at its own expense, repair any damage caused to the Property by the Leasehold Improvements or trade fixtures or the removal thereof. In the event that the Tenant fails to remove its trade fixtures prior to the expiry or earlier termination of the Term, such trade fixtures shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Premises and sold or disposed of by the Landlord in such manner as it deems advisable. For greater certainty, the Tenant's trade fixtures shall not include any Building Systems serving the Premises or light fixtures. Notwithstanding anything in this Lease, the Landlord shall be under no obligation to repair or maintain the Tenant's installations.

#### 7.9 Surrender of Premises

At the expiration or earlier termination of this Lease, the Tenant shall peaceably surrender and give up unto the Landlord vacant possession of the Premises in the same condition and state of repair as the Tenant is required to maintain the Premises throughout the Term and in accordance with its obligations in Section 7.1.

### ARTICLE 8 -INSURANCE

#### 8.1 Tenant's Insurance

The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect at all times throughout the Term the following insurance:

- (a) "All Risks" insurance upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Premises or on the Property, including, without limitation, stock-in-trade, furniture, equipment, partitions, trade

fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time without deduction for depreciation, subject to an agreed amount clause and with a contingent liability from enforcement of building by-laws endorsement and an inflation protection endorsement;

- (b) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Premises and the Common Areas, which coverage shall include the business operations conducted by the Tenant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than two million dollars (\$2,000,000.00) or such higher limits as the Landlord may reasonably require from time to time; and
- (c) such other forms of insurance as may be reasonably required by the Landlord and any mortgagee from time to time.

All such insurance shall be with insurers and shall be upon such terms and conditions as the Landlord reasonably approves. The insurance described in Section 11.1(a) shall name as loss payee the Landlord, and anyone else with an interest in the Premises from time to time designated in writing by the Landlord, and shall provide that any proceeds recoverable in the event of damage to Leasehold Improvements shall be payable to the Landlord. The insurance described in Section 11.1(b) shall name as an additional insured the Landlord, (The Town of Amherstburg). The Landlord agrees to make available such proceeds toward repair or replacement of the insured property if this Lease is not terminated pursuant to the terms of this Lease. All public liability insurance shall contain a provision for cross liability or severability of interest as between the Landlord and the Tenant.

All of the foregoing property policies shall contain a waiver of any right of subrogation or recourse by the Tenant's insurers against the Landlord or the Landlord's mortgagees, their contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of the Landlord, its mortgagees, their contractors, agents or employees. The Tenant shall obtain from the insurers under such policies undertakings to notify the Landlord in writing at least thirty (30) days prior to any cancellation thereof. The Tenant shall furnish to the Landlord upon written request, certificates of all such policies. The Tenant agrees that if it fails to take out or to keep in force such insurance or if it fails to provide a certificate of every policy and evidence of continuation of coverage as herein provided, the Landlord shall have the right to take out such insurance and pay the premium therefor and, in such event, the Tenant shall pay to the Landlord the amount paid as premium plus fifteen percent (15%), which payment shall be deemed to be Rent payable on the first day of the next month following the said payment by the Landlord.

## 8.2 Landlord's Insurance

The Landlord may maintain such insurance in respect of the Property and its operation and management as the Landlord determines, in its sole discretion. The Tenant shall not be an insured under the policies with respect to the Landlord's insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or their proceeds.

## 8.3 Increase in Premiums

If the occupancy of the Premises, the conduct of business in the Premises, or any acts or omissions of the Tenant in the Property or any part thereof causes or results in any increase in premiums for the insurance carried from time to time by



the Owner with respect to the Property, the Tenant shall pay any such increase in premiums as Rent forthwith after invoices for such additional premiums are rendered by the Landlord. In determining whether increased premiums are caused by or result from the use and occupancy of the Premises, a schedule issued by the organization computing the insurance rate on the Property showing the various components of such rate shall be conclusive evidence of the several items and charges which make up such rate. The Tenant shall comply promptly with all requirements and recommendations of the Insurer's Advisory Organization of Canada (or any successor thereof), or of any insurer now or hereafter in effect, pertaining to or affecting the Premises.

#### 8.4 Tenant Indemnity

The Tenant shall indemnify the Landlord and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence in or about the Premises; (b) occasioned or caused wholly or in part by any act or omission of the Tenant or anyone for whom it is in law responsible; or (c) arising from any breach by the Tenant of any provision of this Lease.

#### 8.5 Limits on Liability

In no event, whether or not the result of the willful act or the negligence of the Landlord, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Landlord be liable for: (i) damage to property of the Tenant or others located on the Premises; (ii) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place or quarter; (iii) any damage caused by or attributable to the condition or arrangement of any electric or other wiring; (iv) any damage caused by anything done or omitted to be done by any other tenant of the Building; or (v) any indirect or consequential damages suffered by the Tenant.

### **ARTICLE 9 -ASSIGNMENT AND SUBLETTING**

#### 9.1 Assignment, Subletting

The Tenant shall not affect any Transfer without the prior written consent of the Landlord, which shall not be unreasonably withheld. No consent to any Transfer shall relieve the Tenant from its obligation to pay Rent and to perform all of the covenants, terms and conditions herein contained. In the event of a Transfer, the Landlord may collect Rent or sums on account of Rent from the Transferee, and apply the net amount collected to the Rent payable hereunder but no such Transfer or collection or acceptance of the Transferee as tenant, shall be deemed to be a waiver of this covenant.

#### 9.2 Landlord's Consent

If the Tenant desires to affect a Transfer, then and so often as such event shall occur, the Tenant shall make its request to the Landlord in writing. The Tenant's request shall contain the information required by Section 9.3, and the Landlord shall, within fourteen (14) days after receipt of such request, notify the Tenant in writing either that: (a) the Landlord consents or does not consent, as the case may be; or (b) the Landlord elects to cancel and terminate this Lease if the request is to assign the Lease or to sublet or otherwise transfer all of the Premises or, if the request is to sublet or otherwise transfer a portion of the Premises only, to cancel and terminate this Lease with respect to such portion. If the Landlord elects to cancel this Lease as aforesaid and so advises the Tenant in writing, the Tenant shall then notify the Landlord in writing within fifteen (15)



days thereafter of the Tenant's intention either to refrain from such Transfer or to accept the cancellation of the Lease (in whole or in part, as the case may be).

Failure of the Tenant to deliver notice to the Landlord within such fifteen (15) day period advising of the Tenant's desire to refrain from such Transfer shall be deemed to be an acceptance by the Tenant of the Landlord's cancellation of this Lease (in whole or in part, as the case may be). Any cancellation of this Lease pursuant to this Section 9.2 shall be effective on the later of the date originally proposed by the Tenant as being the effective date of the Transfer and the last day of the month sixty (60) days following the date of the Landlord's notice to cancel this Lease.

### 9.3 Requests for Consent

Requests by the Tenant for the Landlord's consent to a Transfer shall be in writing and shall be accompanied by the name, address, phone numbers, business experience, credit and financial information and banking references of the Transferee, and shall include a true copy of the document evidencing the proposed Transfer, and any agreement relating thereto. The Tenant shall also provide such additional information pertaining to the Transferee as the Landlord may reasonably require. The Landlord's consent shall be conditional upon the following:

- (a) the Tenant remaining fully liable to pay Rent and to perform all of the covenants, terms and conditions herein contained;
- (b) the Tenant having regularly and duly paid Rent and performed all the covenants contained in this Lease;
- (c) the Tenant paying to the Landlord, prior to receiving such consent, an administrative fee to the Landlord and all reasonable legal fees and disbursements incurred by the Landlord in connection with the Transfer (which will not exceed \$250);
- (d) the Tenant paying to the Landlord, as Rent, all excess rent and other profit earned by the Tenant in respect of the Transfer; and
- (e) the Landlord receiving sufficient information from the Tenant or the Transferee to enable it to make a determination concerning the matters set out above.

### 9.4 Change of Control

Any transfer or issue by sale, assignment, bequest, inheritance, operation of law, or other disposition, or by subscription, of any part or all of the corporate shares of the Tenant or any other corporation, which would result in any change in the effective direct or indirect control of the Tenant, shall be deemed to be a Transfer, and the provisions of this Article 9 shall apply *mutatis mutandis*. The Tenant shall make available to the Landlord or to its lawful representatives such books and records for inspection at all reasonable times in order to ascertain whether there has, in effect, been a change in control. This provision shall not apply if the Tenant is a public company or is controlled by a public company listed on a recognized stock exchange and such change occurs as a result of trading in the shares of a corporation listed on such exchange. Notwithstanding the foregoing, the shareholders of the Tenant are permitted, without the consent of the Landlord, to transfer his, her or its shares of the tenant to a corporation, the shareholders of whom are a corporation controlled by the shareholder, the shareholder or members of his or her family or to a trust, the beneficiaries of which are the shareholder or members of his or her family and provided that the trustee is the shareholder or an entity at all times controlled by the shareholder.

## 9.5 Terms of Transfer

In the event of a Transfer, Landlord shall have the following rights, in default of any of which no such Transfer shall occur or be effective:

- (a) to require the Transferee to enter into an agreement with the Landlord to be bound by all of the Tenant's obligations under this Lease, and to waive any right it, or any person on its behalf, may have to disclaim, repudiate or terminate this Lease pursuant to any bankruptcy, insolvency, winding-up or other creditors' proceeding, including, without limitation, the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), and to agree that in the event of any such proceeding the Landlord will comprise a separate class for voting purposes;
- (b) to require, if the Transfer is a sublease or other transaction other than an assignment, that upon notice from the Landlord to the Transferee all amounts payable by the Transferee each month shall be paid directly to the Landlord who shall apply the same on account of the Tenant's obligations under this Lease.

## 9.6 No Advertising

The Tenant shall not advertise that the whole or any part of the Premises is available for assignment or sublease, and shall not permit any broker or other person to do so unless the text and format of such advertisement is approved in writing by the Landlord. No such advertisement shall contain any reference to the rental rate of the Premises.

## 9.7 Assignment by Landlord

In the event the Landlord ceases to operate and manage the Project, and in conjunction therewith the Landlord assigns this Lease or any interest of the Landlord herein to any Person, the Landlord shall be relieved of any liability under this Lease in respect of matters arising from and after such assignment.

## 9.8 Status Certificate

The Tenant shall, on ten (10) days' notice from the Landlord, execute and deliver to the Landlord a statement as prepared by the Landlord in writing certifying the following: (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the modifications and that the same is in full force and effect as modified; (b) the amount of the annual rent then being paid; (c) the dates to which annual rent, by installments or otherwise, and other Rent or charges have been paid; and (d) whether or not there is any existing default on the part of the Landlord of which the Tenant has notice.

## 9.9 Subordination and Attornment

This Lease and all of the rights of the Tenant hereunder are and shall at all times be subject and subordinate to any and all mortgages and any renewals or extensions thereof, now or hereinafter in force against the Project. Upon the request of the Landlord, the Tenant shall promptly subordinate this Lease and all its rights hereunder in such form or forms as the Landlord may require to any such Mortgage or Mortgages, and to all advances made or hereinafter to be made upon the security thereof and will, if required, attorn to the holder thereof.

## ARTICLE 10 -QUIET ENJOYMENT

### 10.1 Quiet Enjoyment

The Tenant, upon paying the Rent hereby reserved, and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Premises for the Term.

## ARTICLE 11 -DAMAGE AND DESTRUCTION

### 11.1 Damage and Destruction to Premises

If the Premises or any portion thereof are damaged or destroyed by fire or by other casualty, rent shall abate in proportion to the area of that portion of the Premises which, in the opinion of the Landlord's architect or professional engineer, is thereby rendered unfit for the purposes of the Tenant until the Premises are repaired and rebuilt, and the Landlord shall repair and rebuild the Premises. The Landlord's obligation to repair and rebuild shall not include the obligation to repair and rebuild any chattel, fixture, leasehold improvement, installation, addition or partition in respect of which the Tenant is required to maintain insurance hereunder, or any other property of the Tenant. Rent shall recommence to be payable one (1) day after the Landlord notifies the Tenant that the Tenant may reoccupy the Premises for the purpose of undertaking its work.

### 11.2 Right to Terminate

Notwithstanding Section 11.1:

- (a) if the Premises or any portion thereof are damaged or destroyed by any cause whatsoever and cannot, in the opinion of the Landlord's architect or professional engineer, be rebuilt within one hundred and twenty (120) days of the damage or destruction, the Landlord may, instead of rebuilding the Premises, terminate this Lease by giving to the Tenant within thirty (30) days after such damage or destruction notice of termination and thereupon rent and other payments hereunder shall be apportioned and paid to the date of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Premises to the Landlord; and
- (b) if the Building shall, at any time, be wholly or partially destroyed or damaged (whether or not the Premises have been affected) to the extent that twenty-five percent (25%) or more of the gross floor area of the Building has become unfit for use, the Landlord may elect, within thirty (30) days from the date of such damage, to terminate this Lease on thirty (30) days' notice to the Tenant, in which event rent shall remain payable until the date of termination (unless it has abated under Section 11.1).

### 11.3 Certificate Conclusive

Any decisions regarding the extent to which the Premises or any portion of the Building has become unfit for use shall be made by an architect or professional engineer appointed by the Landlord, whose decision shall be final and binding upon the parties.

### 11.4 Insurance Proceeds

Notwithstanding Sections 11.1 and 11.2, in the event of damage or destruction occurring by reason of any cause in respect of which proceeds of insurance are substantially insufficient to pay for the costs of rebuilding the Building or the Premises, or are not payable to or received by the Landlord, or in the event that, any mortgagee, or any other person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for such purpose, or in the event that the Landlord is not able to obtain all necessary

governmental approvals and permits to rebuild the Building or the Premises, the Landlord may elect, on written notice to the Tenant, within thirty (30) days of such damage or destruction, to terminate this Lease, and the Tenant shall immediately deliver up vacant possession of the Premises to the Landlord.

#### 11.5 Reconstruction

In performing any reconstruction or repair, the Landlord may effect changes to the Building and Building Systems and minor changes in the location or area of the Premises. The Landlord shall have no obligation to grant to the Tenant any Tenant's allowances to which it may have been entitled at the beginning of the Term, and shall have no obligation to repair any damage to Leasehold Improvements or the Tenant's fixtures, furniture or equipment.

### ARTICLE 12 –DEFAULT

#### 12.1 Default and Right to Re-Enter

Any of the following constitutes an Event of Default under this Lease:

- (a) any Rent due is not paid when due, whether or not Landlord has given any notice in writing to the Tenant;
- (b) the Tenant has breached any of its obligations in this Lease (other than the obligation to pay Rent) and, if such breach is not otherwise listed in this Section 12.1, after notice in writing from the Landlord to the Tenant:
  - (i) the Tenant fails to remedy such breach within ten (10) days (or such shorter period as may be provided in this Lease); or
  - (ii) if such breach cannot reasonably be remedied within ten (10) days or such shorter period, the Tenant fails to commence to remedy such breach within ten (10) days after notice in writing, or thereafter fails to proceed diligently to remedy such breach;
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets, other than in conjunction with an assignment or sublease approved by the Landlord;
- (f) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking;
- (g) the Tenant effects a Transfer other than in compliance with the provisions of this Lease;
- (h) the Tenant abandons or attempts to abandon the Premises or the Premises become vacant or substantially unoccupied for a period of three (3) consecutive days or more;
- (i) the Tenant moves or commences, attempts or threatens to move its trade fixtures, chattels and equipment out of the Premises; or



- (j) any insurance policy covering any part of the Project is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any action or omission by the Tenant or any Person for whom it is legally responsible.

## 12.2 Default and Remedies

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Premises and repossess them and, in either case, enjoy them as of its former estate, and to remove all persons and property from the Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant. If the Landlord enters the Premises without notice to the Tenant as to whether it is terminating this Lease under this Section 12.2(a) or proceeding under Section 12.2(b) or any other provision of this Lease, the Landlord shall be deemed to be proceeding under Section 12.2(b), and the Lease shall not be terminated, nor shall there be any surrender by operation of law, but the Lease shall remain in full force and effect until the Landlord notifies the Tenant that it has elected to terminate this Lease. No entry by the Landlord during the Term shall have the effect of terminating this Lease without notice to that effect to the Tenant;
- (b) to enter the Premises as agent of the Tenant to do any or all of the following: (i) re-let the Premises for whatever length and on such terms as the Landlord, in its discretion, may determine and to receive the rent therefor; (ii) take possession of any property of the Tenant on the Premises, store such property at the expense and risk of the Tenant, or sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant; (iii) make alterations to the Premises to facilitate their re-letting; and (iv) apply the proceeds of any such sale or re-letting first, to the payment of any expenses incurred by the Landlord with respect to any such re-letting or sale, second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it becomes due and payable, provided that the Tenant shall remain liable for any deficiency to the Landlord;
- (c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter upon the Premises for such purposes. No notice of the Landlord's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such default. The Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith;
- (d) to recover from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Premises; and
- (e) to recover from the Tenant the full amount of the current month's Rent together with the next three months' installments of Rent, all of which shall immediately become due and payable as accelerated rent.

### 12.3 Distress

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

### 12.4 Costs

The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord.

### 12.5 Remedies Cumulative

Notwithstanding any other provision of this Lease, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or common law.

## ARTICLE 13 -GENERAL

### 13.1 Entry

The Landlord shall be entitled, without notice to or consent by the Tenant:

- (1) at any time during the last nine (9) months of the Term, to place upon the exterior of the Premises, the Landlord's usual notice(s) that the Premises are for rent; and
- (2) at any time during the last nine (9) months of the Term, on reasonable prior notice, to enter upon the Premises during Normal Business Hours for the purpose of exhibiting same to prospective tenants.

The Landlord may enter the Premises at any time during the Term upon reasonable notice for the purpose of exhibiting the Premises to prospective mortgagees and/or purchasers or for the purpose of inspecting the Premises.

### 13.2 Force Majeure

Notwithstanding any other provision contained herein, in the event that either the Landlord or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section 13.2 shall not under any circumstances operate to excuse the Tenant from prompt payment of Rent and/or any other charges payable under this Lease.

### 13.3 Effect of Waiver or Forbearance

No waiver by any party hereto of any breach by any other party of any of its covenants, agreements or obligations contained in this Lease shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations nor shall any forbearance by any party hereto to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to the Landlord hereunder shall be paid without any deduction, set off or abatement whatsoever, and the Tenant hereby waives the benefit of any statutory or other right in respect of abatement or set off in its favour at the time hereof or at any future time.

### 13.4 Notices

Any notice required hereunder may be delivered personally or sent by prepaid registered or certified mail or prepaid courier to the following addresses:

if to the Landlord, at:           The Town of Amherstburg  
271 Sandwich Street South  
Amherstburg, Ontario  
N9V 2A5  
Attention: Dennis Laporte,  
  Director of Culture and Recreation  
Phone: 1-519-736-0012

if to the Tenant, at:           Jeff Levy  
Jeff Levy Investments Inc.  
Canadian Tire Store  
380 Sandwich Street  
Amherstburg, ON  
N9V 3B5

and any such notice so delivered or sent shall be deemed to have been given or made and received upon delivery of the same or on the fifth (5<sup>th</sup>) business day following the mailing of same. Each party may, by notice in writing to the others from time to time, designate an alternative address in Canada to which notices given more than ten (10) days thereafter shall be addressed.

Notwithstanding the foregoing, any notice to be given or made to any party hereunder during any disruption in the service of the Canada Post Office shall be deemed to have been received only if delivered personally or by facsimile transmission or sent by prepaid courier.

### 13.5 Registration

Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant (including any Transferee) shall register this Lease or any Transfer against the Property. The Tenant may register a notice or caveat of this Lease provided that: (a) a copy of the Lease is not attached; (b) no financial terms are disclosed; (c) the Landlord gives its prior written approval to the notice or caveat; and (d) the Tenant pays the Landlord's reasonable costs on account of the matter. The Landlord may limit such registration to one or more parts of the Property. Upon the expiration or earlier termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat. If any part of the Property which, in the opinion of Landlord, is surplus is transferred, the Tenant shall forthwith, at the request of the Landlord, discharge or otherwise vacate any such notice or caveat as it relates to such part. If any part of the Property is made subject to any easement, right-of-way or similar right, the

Tenant shall immediately, at the request of the Landlord, postpone its registered interest to such easement, right-of-way or similar right.

#### 13.6 Successors and Assigns

The rights and liabilities of the parties shall ensure to the benefit of their respective heirs, executors, administrators, successors and assigns, subject to any requirement for consent by the Landlord hereunder.

#### 13.7 Confidentiality

The contents, terms and conditions of this Lease shall be kept strictly confidential by the Tenant. The Tenant shall not, under any circumstances, discuss or reveal the details of this Lease with any arm's-length parties including, but not limited to, any other tenants in the Property, prospective tenants, real estate agents or others except the Tenant's legal and financial advisors, any *bona fide* Transferee, and except as may be required by law.

### ARTICLE 14 -SPECIAL PROVISIONS

#### 14.1 Sports Retail Exclusivity Rights

Tenant shall, so long as it is not in default under this Lease, enjoy the exclusive right to sell its traditional sports retail goods and services as defined in Section 6.1 within the building and on the entire grounds of the project subject to compliance with the Landlord's requirements regarding same. If the Tenant's exclusivity is violated, the Landlord will immediately take steps to remedy the violation. If the violation has demonstrably affected the Tenant's sales, then a mutually agreed compensation will be paid to the tenant.

#### 14.2 Grant of Security Interest

- (1) Tenant hereby grants to Landlord a continuing security interest (the "Security Interest") in all Tenant's present and future personal property of any kind including, without limiting the generality of the foregoing, all equipment, inventory, chattel paper, instruments, documents of title, supplies, securities, the business on the Premises, accounts receivable, book debts and intangibles, but not including personal property of the Tenant's staff and customers (collectively, the "Collateral") which are or may be at any time hereafter on the Premises or elsewhere, and all proceeds there from, to secure the due and punctual payment of all Rent and the fulfillment of the other obligations of Tenant under this Lease. Except for the Security Interest, Tenant agrees that all Collateral on the Premises shall be the unencumbered property of Tenant. Tenant agrees that the Security Interest shall attach to present Collateral immediately upon the execution of this Lease and, with respect to after-acquired Collateral, immediately upon Tenant's acquiring rights in such Collateral.
- (2) On default by Tenant under this Lease, Landlord may itself, or by its agents or employees, or by a receiver or any replacement thereof appointed in writing by Landlord, take possession of the Collateral, carry on the business on the Premises, in such manner as Landlord or such receiver determines, and realize upon the Collateral and enforce its rights under the Security Interest by any remedy or proceeding authorized or permitted hereby or at law including, without limitation, all rights and remedies available to a secured party in accordance with the laws of the Province of Ontario and any other similar statutes; included in such rights of Landlord is the right to recover the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral and all other reasonable expenses (including legal fees on a substantial indemnity basis), incurred by Landlord. Landlord may exercise any rights as provided by this Section 14.3 on the Premises and for such purpose may lock the Premises,



change any locks on the Premises and by any means exclude Tenant from all or any parts of the Premises and Landlord shall not thereby be terminating this Lease in the absence of express written notice terminating this Lease.

(3) This Security Interest shall not be deemed to have been satisfied, discharged or redeemed by reason of Tenant not being indebted to Landlord at any time or from time to time and no payment shall reduce the amount secured by this Security Interest except to the extent expressly approved by Landlord in writing.

(4) This Security Interest is given in addition, and not as an alternative, and may be exercised by Landlord without prejudice, to any other rights of Landlord under this Lease or at law including, without limitation, Landlord's right of distress.


#### 14.3 Contaminants

The Tenant shall not discharge, cause or permit to be discharged or however to pass in to the sewer systems or surface facilities any deleterious material, toxic, noxious, contaminated or poisonous substances and in the event of the escape or discharge of such material or substances the cost incurred and the clean up to the satisfaction to the Landlord shall be at the Tenants expense.

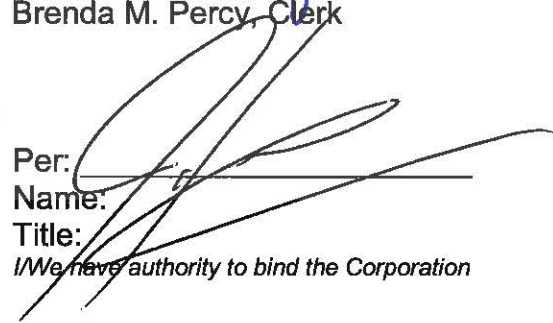
I

**N WITNESS WHEREOF** the parties hereto have duly executed this Lease.

**TOWN OF AMHERSTBURG**

  
\_\_\_\_\_  
Wayne Hurst, Mayor

  
\_\_\_\_\_  
Brenda M. Percy, Clerk

Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
*I/We have authority to bind the Corporation*

Schedule 1.1J: Site Plan of the Project

Schedule 1.1P: Floor Plan of the Premises

Schedule 2.4: Landlord's Work:

The Landlord will provide the space "base building" specifications and all in accordance with local building codes. These specs include: T-bar ceiling, entry doors and locks (aluminum frame with glazing), HVAC and diffusers (no controls), sprinkler and emergency lighting, and rubber skate tile flooring (to match lobby).

The Landlord will provide phone line and data line. Tenant will need to arrange their own POS data provider.

An electrical panel will be provided but no distribution at this time. (This panel will have power capacity to run the 220VAC skate sharpening machine). The Tenant will also be responsible for lights to match fluorescent lighting in main complex hallway and also the all the required electrical receptacles

Tenant will be responsible for; finish painting, retail fixtures and millwork, phone and POS equipment, theft prevention system, service equipment, and all interior store signage and all other necessary improvements to the space.



Schedule 1.1J - Floor Plan of the Premises

**TOWN OF AMHERSTBURG  
MULTI-USE RECREATION COMPLEX**





Schedule 1.1P - Floor Plan of the Premises

