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TO:	CHAIR AND MEMBERS COMMUNITY AND NEIGHBOURHOODS COMMITTEE MEETING ON SEPTEMBER 27, 2011
FROM:	WILLIAM C. COXHEAD DIRECTOR OF PARKS & RECREATION COMMUNITY SERVICES DEPARTMENT
SUBJECT:	SUMMIT PROFESSIONAL BASEBALL LLC (FRONTIER LEAGUE PROFESSIONAL BASEBALL) LICENCE AGREEMENT FOR USE OF LABATT PARK

RECOMMENDATION

That, on the recommendation of the Director of Parks & Recreation with the concurrence of the Executive Director of Community Services, the attached proposed By-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting on October 3, 2011, to:

- a) Approve a Licence Agreement between the City of London and Summit Professional Baseball LLC for non-exclusive use of Labatt Park for the period of November 1, 2011 to October 31, 2016;
- b) Delegate to the Executive Director of Community Services, or designate, the authority to authorize and approve such further other documents, including agreements, that may be required in furtherance of the licence agreement that are:
 - i) Consistent with the requirements contained in the Agreement;
 - ii) That do not require additional funding or are provided for in the City's current budget; and
 - iii) That do not increase the indebtedness or liabilities of The Corporation of the City of London, subject to prior review and approval by the City Solicitor; and
- c) Authorize the Executive Director of Community Services, or designate, to execute any agreements approved under a) or b).

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Community & Protective Services Committee:
 January 31, 2000 The London Professional Baseball Inc. (London Werewolves)

BACKGROUND

SUMMIT PROFESSIONAL BASEBALL

David Martin, President and General Manager of Summit Professional Baseball, contacted the City of London Parks and Recreation, Community Services Department to request the development of a licence agreement for the use of Labatt Park by September 15, 2011 to meet Frontier Professional Baseball requirements. The late request was the result of a failed negotiation with a U.S. location and a search for a new home for the team. The positive publicity surrounding Labatt Park prompted the interest in London.

Summit Professional Baseball is represented by David Martin who has over 20 years of experience in the baseball industry on and off the field. He founded and owns three successful baseball industry companies and he purports to be an accomplished marketer and promoter of baseball. He has consulted and created fan experience environments and themed marketing campaigns for fourteen major league teams.

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This is Mr. Martin's first foray into baseball team ownership and he is confident that he can bring his baseball experience and marketing skills to London to create a successful franchise in this community.

THE FRONTIER LEAGUE

Labatt Park has been home to three professional baseball organizations over the past 30 years. A Frontier League franchise known as the London Werewolves used Labatt Park from 1999 to 2002. The current proposed franchise will participate as an Eastern Division team in the Frontier League. (Frontier League background information Appendix B) The Administration's overall approach has been to identify key success factors which arise from London's past experience with professional baseball as well as our understanding of Council's direction.

LICENCE AGREEMENT

The licence agreement has built on the general terms and conditions of the former Werewolves Frontier League agreement and is updated as required to protect the interests of the City. (The By-law and Agreement are attached as Appendix A)

NON EXCLUSIVE USE

The agreement allows for 48 home games, play off and practice dates for professional baseball. As in the past, 18 dates for intercounty baseball (London Majors) will be accommodated through a scheduling process allowing both the London Majors and the Summit Professional Baseball to call Labatt Park their home field. Displaced from the park will be London minor baseball teams who will be accommodated within the field availability of the baseball system of city fields.

BASEBALL COMMUNITY COMMENTARY

The London Majors have expressed concerns regarding the introduction of another pro-ball team and the City's ability to support both professional baseball and intercounty league play. As one of the long time users of the ball park dating back decades we note their concerns.

The London Badgers Baseball Association represents a large number of the competitive minor baseball players in the city. They are the other prominent user of Labatt Park. Discussions with the Chair have resulted in a position of support for the inclusion of professional baseball in the mix of users at Labatt Park.

FINANCIAL IMPACT

Commercial/Professional baseball use of Labatt Park requires the user pay 100% of the direct operating cost of their use of the facility.

Community use of Labatt Park is heavily subsidized where current users pay only a portion of the cost of operating Labatt Park.

Summit Professional Baseball LLC team will pay significantly more than the users that will be displaced. The estimated net difference in revenue and expense for Pro ball over current amateur use is \$25,000.

Summit Professional Baseball LLC team will also make a donation of \$23,000 which will be used to support the purchase and installation of a new scoreboard.

CONCLUSION

Labatt Park, the oldest, continuously used ball park in the world, and recently voted "Canada's favourite ball park" is a 5,200 seat stadium that is not being used to its capacity.

Current users can be accommodated in the Labatt Park schedule or in the system of available baseball fields. (Norm Aldridge Field/City Wide/Dan Pulham Field)

The reintroduction of professional baseball will add another level of baseball to the sport and entertainment fabric for London.

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Summit Professional Baseball is committed to London and has expressed interest in integrating into the London business community and has developed a business plan that they believe is viable in our city.

SUBMITTED BY:	
SCOTT STAFFORD DIVISION MANAGER PARKS & COMMUNITY SPORTS	
RECOMMENDED BY:	CONCURRED BY:
WILLIAM C. COXHEAD DIRECTOR – PARKS & RECREATION	ROSS L. FAIR EXECUTIVE DIRECTOR DEPARTMENT OF COMMUNITY SERVICES

c Lynn Marshall, Solicitor
Joy Jackson, Manager, Risk Management
Attachments



APPENDIX A

Bill No.
2011

By-law No.

A By-law to authorize and approve a Licence Agreement between Summit Professional Baseball LLC and The Corporation of the City of London; and to authorize the Executive Director of Community Services, or designate, to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that 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 section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Licence Agreement attached as Schedule "A" to this by-law between Summit Professional Baseball LLC and The Corporation of the City of London for non-exclusive use of Labatt Park, is hereby authorized and approved.
2. The Executive Director of Community Services, or written designate, is delegated the authority to authorize and approve such further other documents, including agreements that may be required in furtherance of the licence agreement that are:
 - i) consistent with the requirements contained in the Agreement authorized and approved in 1 above;
 - ii) that do not require additional funding or are provided for in the City's current budget; and,
 - iii) that do not increase the indebtedness or liabilities of The Corporation of the City of London, subject to prior review and approval by the City Solicitor.
3. The Executive Director of Community Services, or designate, is authorized to execute the Agreement authorized and approved under section 1 of this by-law and any other agreements approved under section 2 of this by-law.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2011

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second Reading -
Third Reading -

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This Agreement made in triplicate as of the (___) day of October, 2011.

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON
(the "City")

-and-

SUMMIT PROFESSIONAL BASEBALL LLC.
(the "Club")

WHEREAS the Club owns and operates a professional baseball team known as the Summit Professional Baseball LLC. which team is a franchise of The Frontier League of Professional Baseball;

AND WHEREAS the City owns premises known as Labatt Park located at 25 Wilson Avenue in the City of London (the "Facility") as shown on Schedule "A" attached;

AND WHEREAS the Club has requested the City to grant to it a non-exclusive licence or permission to use the Facility;

AND WHEREAS the City has agreed to grant to the Club a non-exclusive licence or permission to use the Facility strictly for the purposes as set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions in this Agreement, the parties agree as follows:

1.0 LICENCE

1.1 The City hereby grants to the Club a non-exclusive licence and permission to use and occupy the Facility subject to the terms and conditions contained in this Agreement.

2.0 USE

2.1 The Club agrees to use the Facility for the purposes listed below only and for no other purpose:

a) Baseball Games, Practices and Clinics

i) The Club shall be allowed to use the Facility for the Club's regular season and playoff baseball games, league all-star game, practices, team events and clinics in conjunction therewith, subject to the provisions of this Agreement.

ii) The City agrees to give the Club first priority in scheduling the use of the Facility during the Club's regular season and playoffs, save and except the July 1st date, which shall be allocated by the City. This priority shall be enjoyed only from May 1st to September 31st of each year and every year of the term of this Agreement and only on the condition that the Club provides to the City, in writing, on or before October 31st of each year during the term of this Agreement the Club's schedule for the next year. Should the Club fail to provide the schedule in writing by October 31st, the City shall have the right to schedule the use of the Facility by other users on such dates and times as the City, in its sole discretion, deems appropriate.



- iii) The City reserves the right to schedule use of the Facility by other users on such dates and times not scheduled for use by the Club.
- iv) During dates when there are multiple uses of the Facility, the City shall have the right in its absolute discretion to cancel the Club's use of the Facility for games, practices or clinics due to inclement, threatening or predicted bad weather in order to ensure appropriate playing conditions for future games.
- v) The City reserves the right to establish black-out dates for which the park will be unavailable. This will allow for Provincial and National Baseball Championship bid proposals to occur.
- b) Locker Room
 - i) Notwithstanding paragraph 1.1, the Club shall be allowed exclusive use of the home team locker room located under the third base grandstand ("Locker Room") for the purpose of a locker room, manager's office, training room, laundry room and baseball equipment storage room for the Club. The club shall be responsible for its own laundry equipment.
 - ii) The Club shall be permitted to use the Locker Room only in conjunction with the Club's regular season and playoff baseball games, practices and clinics in conjunction therewith as scheduled by the City. The Club shall be permitted to use the Locker Room during the off season for the purpose of equipment storage. The Club shall be permitted to use the Locker Room at any time for the purpose of housekeeping and laundering functions.
 - iii) The Locker Room shall be vacated within one hour after the completion of the game, practice or clinic.
 - iv) The Club shall, at its expense, be responsible for all security for the Locker Room. The City shall not be responsible for any damage to the Locker Room, its contents, or the Facility, including without limitation damage as a result of theft, vandalism, fire or the condition of the Locker Room or the Facility.
 - v) The Club shall, at its expense, maintain and repair the Locker Room in a proper state of repair reasonable wear and tear only excepted. Without limiting the generality of the foregoing, the Club shall not be responsible for carpet that is worn due to normal wear and tear. The Club agrees that the Locker Room shall at all times be kept in a neat, clean and sanitary condition.
 - vi) The Club shall pay the cost for all utility hookups and the supply of utilities, separately metered for the Locker Room. Utilities include but are not limited to water, electricity, telephone, internet.
- c) Concession Facilities
 - i) The Club shall be allowed to operate food concessions from portable concession stalls/trailers, concession outlets 1 and 2 and souvenir sales from the souvenir booth. The Club's use of the portable concessions and concession outlet 2 shall be non-exclusive. The Club's use of concession outlet 1 shall be exclusive. All portable concession stall/trailers shall be installed only at those locations as approved, in writing in advance, by the City.
 - ii) Operation of the Concession Facilities shall be limited to the Club's regular season and playoff baseball games as scheduled by the City. The Club may be permitted to operate the Concession Facilities at such other times as the City may, in writing in advance, permit.
 - iii) The Club shall, at its expense, be responsible for all security for the Concession Facilities. The City shall not be responsible for any damage to the Concession Facilities, its contents or equipment owned by the Club, including without limitation damage as a result of theft, vandalism, fire or the condition of the Concession



Facilities or the Facility.

- iv) The Club shall, at its expense, maintain in a proper state of repair (reasonable wear and tear only excepted), repair, and operate the Concession Facilities.
 - v) The Club shall, at its expense, provide, maintain and repair all of the equipment necessary for the operation of the Concession Facilities.
 - vi) The Club shall pay the cost for all utility hookups and the supply of all utilities separately metered for the Concession Facilities.
 - vii) The Concession Facilities shall at all times be kept in a neat, clean and sanitary condition. All federal, provincial and municipal laws respecting public health, safety, labour and sanitation and the operation of the Concession Facilities shall be complied with.
 - viii) The Club shall, at its expense, dispose of all refuse, recycling and garbage from the Concession Facilities. Refuse stored on site prior to disposal should be located as directed by the City.
- d) Advertising
- i) The Club shall be permitted a non-exclusive right to sell advertising signs for installation on the chain link fence surrounding the field of the Facility save and except a portion of the chain link fence being forty (40) feet in length located under the scoreboard which space shall be allocated by the City to other users. All signs shall measure 8 feet by 16 feet and shall be constructed of material as approved by the City.
 - ii) Installation and removal of the signs shall be at the Club's expense.
 - iii) The Club shall be responsible for security of the signs and for all damage including without limitation all damage incurred as a result of weather conditions, vandalism, theft, fire or other perils.
 - iv) All advertising shall comply with the City of London Council Policy on advertising (Appendix 17(9A), viewable at www.London.ca, or any successor policy). The City reserves the right to approve the content and quality of each sign prior to installation. If, in the opinion of the City in its sole discretion, a sign is unsuitable for display at the Facility, the Club shall be prohibited from installing such sign. The City reserves the right to remove any sign, at any time, that the City in its sole discretion may determine to be unsuitable. The cost of such removal shall be at the expense of the Club.
 - v) The Club acknowledges and agrees the right of the Club to sell advertising shall not be an exclusive right. The City, for itself and others, hereby reserves the right to sell and solicit further advertising for installation and display at the Facility.
 - i) Installation of advertising signs at locations other than the chain link fence surrounding the field of the Facility shall require the prior written approval of the City which approval may be unreasonably withheld.

3.0 TERM

- 3.1 The Licence and permission hereby granted shall commence October 15, 2011 and shall terminate and be fully at an end on October 14, 2012, subject to earlier termination as provided in this Agreement.
- 3.2 Provided that the Club is not in default of any of its obligations hereunder, this Agreement may be renewed for four further one-year terms if both parties agree in writing. Any request for such renewal shall be made in writing and no later than September 15th of each subsequent year.



4.0 FEES (Canadian Currency)

4.1 The Club shall pay to the City a licence fee, exclusive of H.S.T., or other applicable tax, for the use of the Facility as follows:

- ii) for the period November 1, 2011 to October 31, 2012 the sum of \$50,000;
- iii) for the period November 1, 2012 to October 31, 2013 the sum of \$51,000;
- iv) for the period November 1, 2013 to October 31, 2014 the sum of \$52,200;
- v) for the period November 1, 2014 to October 31, 2015 the sum of \$53,244;
- vi) for the period November 1, 2015 to October 31, 2016 the sum of \$54,308.

The said licence fee shall be for the Club's use of the Facility for 48 regular season games, 20 daytime practices, one evening practice, all playoff games and potentially a Frontier League All Star Game.

- 4.2 i) The Club agrees to pay the rental fee for each year of the Agreement in four equal payments due June 6, June 23, July 20 and August 14 of each year.
- ii) Notwithstanding i) above, for the inaugural season The Club agrees to pay \$25, 000 on October 14, 2011 with the remainder due in four equal payments as outlined in 4.2 i).

4.3 The Club agrees to make a donation of \$23,000 to the City, payable in four equal payments on November 15, 2011, April 15, 2012, November 15, 2012, April 15, 2013, which donation is not subject to any restrictions, and which does not create a charitable purpose trust, and which the City may use in its sole discretion including in support of a new scoreboard.

5.0 OBLIGATIONS OF THE CLUB

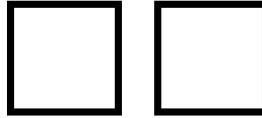
5.1 The Club hereby covenants and agrees to do everything within its power to maintain the Club's good standing in The Frontier League of Professional Baseball, and that where the Club is no longer in good standing with The Frontier League of Professional Baseball, the City may, at its option, terminate this Agreement, pursuant to the terms herein.

5.2 The Club, having inspected the Facility, agrees to accept the Facility as is. The Club acknowledges and agrees that the Facility is suitable for its purposes and will not at any time during this Agreement or any renewal or extension thereof require the City to make any improvements, alterations or additions to the Facility. The Club further acknowledges and agrees that the City does not intend to make any improvements, alterations or additions to the Facility and makes no representations or warranties to the Club as to the likelihood of the City undertaking any improvements, alterations or additions to the Facility during this Agreement or any renewal or extension thereof.

The Club acknowledges that the Facility may contain **asbestos** or other toxic or harmful substances. The Club shall not make any alterations to the Facility, without the prior written express approval of the Executive Director of Community Services. Alterations that shall not be made without such approval include, but are not limited to, the following: drilling holes in any walls, floors or ceilings; inserting nails into any walls, floors or ceilings; making any structural changes; painting walls.

5.3 The Club shall use the Facility at all times in a careful, clean, safe, quiet and proper manner and to the satisfaction of the City and shall ensure that:

- a) the number of persons using the Facility shall not exceed its approved capacity;
- b) law and order is preserved;
- c) no dangerous materials, including but not limited to flammable or explosive materials, are brought into the Facility;
- d) there is no use of open flames;
- e) there is no posting or displaying offensive or illegal material;
- f) there is no inappropriate activity, as determined in the sole opinion of City's Executive Director of Community Services ("Executive Director"), or written



designate;

- g) no smoking is allowed on the property;
- h) alcoholic beverages shall not be permitted at the Facility except as provided in this Agreement;
- i) the use of the Facility shall at all times during the term of this Agreement comply with the law and the rules, regulations and policies of the City;
- j) vehicles shall only be parked in designated parking areas;
- k) no changes or alterations shall be made to the Facility without the prior written consent of the Executive Director, or written designate; and
- l) for any game or double header game, no inning shall start after 11:00 pm., except for a game that is the last game that the opposing team is scheduled to play in London during the regular season and playoff games.

5.4 The City shall be at liberty to make any rules, regulations or policies that it from time to time may deem fit for the proper conduct of any person or persons using the Facility and for the safety and convenience of the persons visiting the Facility and the Club agrees with the City to be bound by such rules, regulations and policies.

5.5 The Club shall, at its expense, employ, pay and be responsible for adequate police or security, ticket sellers, ticket takers, ushers, fencepersons, umpires, referees and such other persons as may be deemed necessary by the City, in its sole discretion, for the proper operation of the Facility. Upon the failure on the part of the Club to provide any of the aforesaid services, the City may provide the same and the Club agrees to pay the cost thereof to the City forthwith on demand.

5.6 The Club shall employ only competent and orderly employees which employees shall keep themselves neat and clean and shall be courteous to all members of the public using the Facility.

5.7 The Club shall not carry on any business or endeavour in the Facility that would constitute an actionable nuisance.

5.8 The Club shall give to the City immediate written notice of any accident, damage or injury occurring at or arising out of the use of the Facility by the Club whether to persons or property.

5.9 The City or any authorized agent or servant of the City shall have the right at any reasonable time, without notice, to enter and inspect the Facility, including the Locker Room.

5.10 The Club shall pay as and when they fall due all taxes and rates charges, assessed or levied in respect of all business or other activity carried on in or in connection with the Facility or in respect of the Club's business, income or property, and taxes personal to the Club.

5.11 The Club agrees that it shall obey and observe all laws, by-laws, policies and regulations of the City, the Province of Ontario and the Government of Canada.

5.12 The Club shall obtain, at its own expense, all permits required for the sale and consumption of alcoholic beverages at the Facility. The Club agrees that the sale and consumption of alcoholic beverages at the Facility shall be prohibited unless the Club has obtained all required permits. The Club agrees to comply with all of the terms and conditions of the City's Special Events Policies & Procedures Manual and the Alcohol Risk Management Policy. The Club agrees to comply with all requirements of the Middlesex-London Health Unit.

6.0 OBLIGATIONS OF THE CITY

6.1 The City agrees, at its expense, to provide the following:

- a) maintenance of the turf area including the playing surface and grounds;
- b) maintenance of all landscaped areas;
- c) all custodial services associated with the public washrooms and the visiting team



- locker room;
- d) pre and post game removal of garbage and debris from the bleacher/grandstand;
- e) all field preparations prior to each game including small base and mound tarp placement and removal, infield preparations and all appropriate linings;
- f) opening and closing of all public spaces post and prior to scheduled games;
- g) all utilities supplied to the Facility save and except those utilities which are the responsibility of the Club pursuant to this Agreement; and
- h) attendants during game time to perform grounds maintenance and assist with operational concerns.

6.2 The City agrees to maintain the Facility in good and tidy conditions except for those areas that are the responsibility of the Club under this Agreement.

7.0 INSURANCE

7.1 Throughout the term of this Agreement, the Club shall obtain and maintain the coverage shown below and shall provide that these coverages will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry:

- a) Third party general liability insurance covering all claims for negligence, nuisance, property damage and personal injury, including death, arising out of the use of the Facility by the Club. Such policy shall include those coverages described on the City's standard insurance certificate form #0788, attached, and be in an amount not less than five million (\$5,000,000.00) dollars and shall include the City as an additional insured with respect to this Agreement;
- b) Standard all risk property insurance covering the property of the Licensee, including leasehold improvements, in an amount not less than the full replacement cost value with a deductible of no more than \$2,500.00; such policy shall include a waiver of subrogation in favour of the City; and
- c) Standard all risk tenants legal liability insurance covering the Facility in an amount not less than one million (\$2,000,000.00) and such other liability insurance extensions as may be required by the City from time to time.

7.2 The Club shall not do, omit to do, permit to be done or permit to omit to be done on or at the Facility, anything that may increase premiums or void coverage under the property insurance policies carried by the City on the Facility described in this Agreement.

7.3 The insurance described in 7.1 above will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry. Evidence of such insurance shall be delivered to the City promptly at inception of this Agreement and thereafter prior to the insurance renewal date. Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.

7.4 The City reserves the right to request such higher limits of insurance or other types policies appropriate to this Agreement as the City may reasonably require from time to time.

8.0 INDEMNITY

8.1 The Club shall indemnify and hold the City harmless from and against any liability, loss, claims, demands, costs and expenses, of every nature and kind whatsoever, including reasonable legal fees, occasioned wholly or in part whether wilful or otherwise by reason of or on account of the Club's use or occupation of the Facility or arising out of any breach, violation or non-performance on the part of the Club of any covenant or provision in this Agreement, whether arising from actions of the Club or by its employees, servants, agents, subcontractors, invitees or others for whom the Club is responsible for at law. Such indemnification shall continue in effect after expiry of this Agreement with respect to any matter arising during the use or occupation of the Facility by the Club.

8.2 Without limiting the generality of the foregoing indemnity, the Club shall specifically



indemnify the City from any and all liability, loss, damage or actions based in negligence, nuisance or trespass that results in:

- a) personal injury or death to a person inside or outside the Facility;
- b) property damage whether occurring inside or outside the Facility;
- c) loss of use or enjoyment of private property in the vicinity of the Facility;
- d) economic loss, including lost income, whether future or past, diminished value of private property; or
- e) aggravated or exemplary or punitive damages;

as a result of the Club's use or occupation of the Facility or the Club's use of the Facility's sound system or light system.

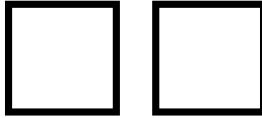
- 8.3 The Club agrees that the foregoing indemnity shall apply to all claims or losses arising from fly balls leaving the Facility. The Club agrees that the City is not obliged to provide any additional netting or backstop other than the existing netting constructed over the grandstand, or to pay for or provide any modifications to the Facility except as are specifically called for in this Agreement or paid for by the Club.
- 8.4 The Club agrees that in the event that any Third Party obtains an injunction preventing the use of the Facility by the Club for playing baseball, that in that case the Club agrees that it will not hold the City in any way responsible for any losses incurred thereby, whether by the Club or any other party and agrees to indemnify the City for all such losses.

9.0 DEFAULT AND TERMINATION

- 9.1 In the case of damage by fire, lightning, tornado or tempest which, in the sole discretion of the City, makes repair of such damage within fourteen (14) days impossible, the City may terminate this Agreement immediately and each party shall be released from further obligations under this Agreement.
- 9.2 In the event that the Club fails to comply with any term of this Agreement, including but not limited to default in payment of any licence fee on its due date, the City may terminate the privilege and licence herein granted at any time by giving notice in writing to the Club specifying the nature of the default, and if upon the expiration of five (5) days following delivery of such notice the default has not been cured, all rights of the Club under this Agreement shall at the option of the City cease and be at an end, and the City may enter and take possession of the Facility and those portions thereof occupied, whether exclusively or otherwise, by the Club. Any waiver by the City of any breach by the Club of any of the provisions of this Agreement shall be without prejudice to the exercise by the City of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
- 9.3 If:
 - a) the Club is adjudicated a bankrupt, or adjudged to be insolvent, or
 - b) a receiver or trustee of the Club's property and affairs is appointed, or
 - c) the Club makes an assignment for the benefit of creditors or files a petition in bankruptcy or insolvency for the appointment of a receiver, or
 - d) any execution or attachment is used against the Club or any of the Club's property under which any person other than the Club attempts to take or occupy any of the Club's rights under this Agreement, and the execution or attachment is not set aside, vacated, discharged or bonded within fifteen days after it issues, or
 - e) the Club attempts to execute a bulk sale,

this Agreement may at the option of the City be cancelled by delivering to the Club notice to that effect, and upon such delivery this Agreement shall cease, but without prejudice to any rights of the City which had accrued before the cancellation.

- 9.4 Upon termination of this Agreement, the Club shall immediately remove all equipment articles, chattels and fixtures it owns, unless otherwise permitted by the City. Any damage to the Facility caused by such removal shall be repaired by the City at the Club's expense.
- 9.5 Should the Club fail to perform any of the covenants or obligations of the Club the City may



at its option perform or procure the performance of any such covenants or obligations at the expense of the Club which expense shall be paid forthwith by the Club to the City on demand. For the purposes aforesaid, the City may enter the Facility and carry out any work that the City, in its sole discretion, considers requisite to remedy such default.

10.0 GENERAL

- 10.1 The Club acknowledges and agrees that the City Facility may be unavailable for use by the Club if the City closes the Facility because of inclement weather or for any other reason, or if there is an emergency requiring the use of the Facility by the City.
- 10.2 Neither party shall be responsible for damage caused by delay or failure to perform under the terms of this agreement resulting from matters beyond the control of the City or the Club including strike, lockout or any other action arising from a labour dispute, fire (other than a fire caused by the Club's negligence), natural flood, tornado, act of God, war, riot or other civil insurrection, lawful act of public authority, all of which cannot be reasonably foreseen or provided against.
- 10.3 The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.
- 10.4 This Agreement is not intended to and shall not be construed to vest in the Club or anyone employed by the Club under this Agreement any title or property rights in the real estate, fixture or personal property belonging to the City now located or which may be located hereafter in the Facility.
- 10.5 Any notice delivery or payment to the City may be delivered personally to the City or sent by prepaid mail addressed:
to the City at:

City Clerk
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, Ontario
N6A 4L9

and to the Club at:

Summit Professional Baseball
277 Summit Drive
Waterford, Michigan 48328

Any such notice, delivery or payment so delivered or sent shall be deemed to be sufficiently given or made and received upon delivery or the next business day following such mailing of the same as the case may be.

- 10.6 This Agreement and the privileges contained herein shall not be assigned or sublicensed by the Club without the City's prior written consent, which consent may be unreasonably withheld.
- 10.7 Subject to the restrictions on transfer and assignment, this Agreement shall enure to the benefit of and be binding on the parties and their respective heirs, executors, administrator, successors and permitted assigns.
- 10.8 This License is granted so far as the City has power to grant the same and to no greater or other extent, and no member or officer of the City, whether or not a party of this Agreement, shall in any way be personally responsible to the Club or otherwise, under this Agreement.
- 10.9 It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of

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one is found to be invalid or unenforceable for any reason whatever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force and effect.

10.10 In the event any dispute shall arise between the parties hereto during the term of this Agreement, the dispute shall be first submitted to mediation by the City's Chief Administrative Officer or written designate, failing which the dispute shall be submitted to arbitration as follows:

- a) Such dispute shall be submitted to a single arbitrator to be agreed upon by the parties.
- a) If a single arbitrator cannot be agreed upon by the parties within ten (10) days after the appointment of a single arbitrator has been requested by one of the parties, then the dispute shall be referred to a board of three arbitrators, one to be appointed by the Club, one to be appointed by the City, and a third to be appointed by the first two named arbitrators in writing.
- a) If either the Club or the City does not, with or without reason, appoint an arbitrator within (10) days after the other party has appointed an arbitrator and has served notice requiring the appointment of the second arbitrator, then the arbitrator first appointed shall, at the request of the party appointing him or her, proceed to hear and determine the dispute as if he or she were a single arbitrator appointed by both the Club and the City for that purpose.
If two arbitrators are named within the prescribed time and they do not agree within a period of ten (10) days upon the appointment of the third arbitrator, then upon the application of either the Club or the City, the third arbitrator shall be appointed by a Judge of the Ontario Superior Court of Justice.
- a) The determination, which shall be made by the said arbitrators on a majority of them, or by the single arbitrator as the case may be, shall be final and binding upon the parties hereto and the costs of the arbitration and remuneration of the third arbitrator shall be borne equally between the parties hereto, each of them bearing the remuneration of the arbitrator appointed by it.

The provisions of this clause shall be deemed to be a submission to arbitration within the provisions of the Arbitrations Act, 1991 and any statutory modification or re-enactment thereof, provided that any limitation on the remuneration of arbitrators imposed by such legislation shall not apply to any arbitration proceeding commenced pursuant to this agreement. The parties may make a further agreement to arbitration set out in this clause.

10.11 It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be invalid or unenforceable for any reason whatever, then the particular provision or provisions or part of the provisions shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force and effect.

10.12 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

10.13 Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement and are not to be used as an aid in the interpretation of this Agreement.

10.14 This Agreement is to be read with all changes in gender or number as required by the context.

10.15 The Club acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions. Further the Club agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreement, oral or written, and all other communications between the parties relating to the subject-matter of this Agreement.

IN WITNESS WHEREOF the parties have duly executed this agreement, attested by the hands of

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their respective signing officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

Josseph Fontana, Mayor

Catherine Saunders, City Clerk

SUMMIT PROFESSIONAL BASEBALL LLC.

Per:

David H. Martin, President and General Manager

Per:

Name:

Title:

I/We have authority to bind the Corporation.

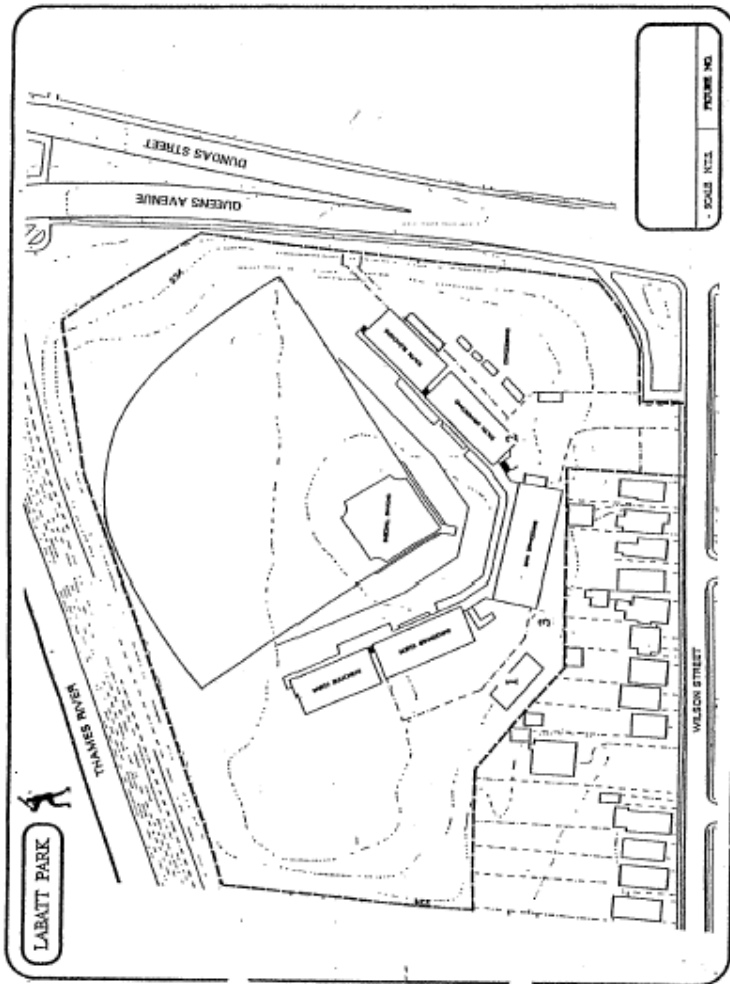
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SCHEDULE "A"
THE FACILITY

LEGEND:


1. Roy McKay Clubhouse
2. Concession #2
3. Concession Trailer



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APPENDIX B



 **London Professional Baseball**

On behalf of Summit Professional Baseball, I am pleased to announce our intentions of locating our professional baseball franchise in the Frontier League to the City of London. As in all successful sport franchises, finding a good home is of the essence and our group feels London, Ontario, the home of Canada's best ballpark, LaBatt Park, is the right choice. Our group looks to bring an exciting and engaging brand of professional baseball to the community while providing a fun and affordable family atmosphere. The professional play on the field, surrounded with the energy of the minor league environment, will create a true entertainment opportunity for the community.

It is our goal to work with local youth baseball programs in continuing to put bat and balls in kids hands and assist in building London, Ontario as a baseball destination. As we look to bring our business and invest into the community, we also look to showcase this great city and ballpark throughout the league and demonstrate what baseball is all about north of the border. London Professional Baseball.....Play Ball!

*David H. Martin
President & General Manager*



APPENDIX “B”



Team Management




David H. Martin takes the helm as the President and Managing Partner of Summit Professional Baseball LLC, member of the Frontier Professional Baseball League. Martin has served the game of baseball professionally for over twenty years both on and off the field. He brings a wealth of experience both in the business of baseball and on the field play of the National Pastime.

The founder of three successful baseball industry companies, Martin keeps his unique talents on the pulse of the national game. Martin, an accomplished marketer and promoter of baseball, has consulted and created fan experience environments and themed marketing campaigns for fourteen Major League Baseball Teams including the Cincinnati Reds, Texas Rangers, New York Yankees, Kansas City Royals and the Tampa Bay Rays. He also worked directly for Major League Baseball developing their MLB Wanna Play initiative to attract and share baseball with inner city youth featured during the MLB Civil Rights Game and World Series. His experience extends to Minor League Baseball as well as he has designed and produced the festivities surrounding the Triple-A All Star Game on five different occasions both in the Pacific Coast League and International League markets. Martin was also responsible for the fan festivals and environment experience surrounding the College World Series in Omaha, Nebraska for the last two seasons for the NCAA featuring both historical and baseball interactive displays.

On the field, Martin is known as an accomplished clinician and true student of the game of baseball. Having coached at three NCAA Division I Baseball programs including the University of Miami of Florida, Bowling Green State University and Eastern Michigan University, Martin is known as a great communicator of the fundamentals and strategy of the game. During his time at the University of Miami, Martin worked under legendary college coach Ron Fraser and assisted the Hurricanes to a 1992 Atlantic Regional Championship and a trip to the College World Series in Omaha, Nebraska. Having the opportunity to coach over twelve players to the Major Leagues including such names as Charles Johnson, Danny Graves and Mike Lowell, Martin has a keen eye on what makes a Big League player. In addition to his collegiate coaching experience, Martin has coached and general managed professionally in several summer leagues including the Great Lakes League, Northeastern League and the prestigious Cape Cod League where he coached the former Chatham A's, the team featured in the 2001 movie Summer Catch.

An accomplished baseball historian, Martin has spoken at many museums throughout the United States on the topic of baseball history including the National Baseball Hall of Fame and Museum in Cooperstown, New York. Martin was also a featured lecturer at the American Baseball Coaches Association National Convention where he presented "Baseball 101 - The History of the American Pastime". Martin has written two one man theatrical performances featuring the life and times of Ty Cobb and Branch Rickey.



Quick Facts

- Frontier League / Independent Professional Minor League Baseball (Founded 1993)
- Teams located throughout mid west United States
- 96 game schedule / 48 Home Games (May – September)
- Family friendly and affordable baseball environment
- We are all about fan experience
- Nostalgic Baseball Feel
- Hometown Team / Neighborhood Feel
- London a Baseball Destination
- Great Food and Entertainment – Promotions, Fireworks, Giveaways
- Local Host Families
- Seasonal Job Creation for Londoners
- Economic Growth – Visiting Fan Base and Teams
- Community Involvement / Ballpark Special Events
- Produce Baseball Camps, Fan Fests, Youth Baseball, Batting Cages & All Star Games
- Fun... and lots of it!

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APPENDIX "B"



License Agreement

- Exclusive Professional Baseball License at LaBatt Park naming Summit Professional Baseball as the primary tenant.
- As the primary tenant, Summit Professional Baseball will be granted all rights that would be associated with such a license including but not limited to priority game and practice scheduling, sponsorship and stadium signage, concessions & game operations.
- 5 Year Lease with 5 Year option
- Exclusive use of 3rd Base Club House (Year Round)
- Exclusive use of LaBatt Park Team Offices (Year Round)
- Exclusive concessions, ticketing, merchandising and sponsor sales during all Frontier League games and related events.
- City to provide all field maintenance and utility services.

