

<b>TO:</b>	<b>CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON APRIL 8, 2013</b>
<b>FROM:</b>	<b>WILLIAM C. COXHEAD MANAGING DIRECTOR OF PARKS &amp; RECREATION</b>
<b>SUBJECT:</b>	<b>LONDON MAJORS BASEBALL LICENCE AGREEMENT FOR USE OF LABATT PARK</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director of Parks & Recreation, the attached proposed By-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting on April 16, 2013, to:

- a) Approve a Licence Agreement between the City of London and London Majors Baseball for non-exclusive use of Labatt Park for the period of April 16, 2013 to October 31, 2014;
- b) Delegate to the Managing Director of Parks and Recreation, 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 Managing Director of Parks and Recreation, or designate, to execute any agreements approved under a) or b).

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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<b>BACKGROUND</b>
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**LONDON MAJORS BASEBALL**

The London Majors play in the Intercounty Baseball League comprised of top senior "A" teams throughout the province. The core of the team continues to be Ontario based players with the addition of up to three players from prominent baseball countries such as the United States, Venezuela, Japan and the Dominican Republic.

**LICENCE AGREEMENT**

The unique nature of Labatt Park and the London Majors specific needs and desires has precipitated the need for a unique licence agreement between the parties that clarifies:

- Roles and responsibilities of each party
- Uses
- Concessions
- Storage
- Advertising
- Fees

(The By-law and Agreement are attached as Appendix A and Schedule 1)

**LIQUOR LICENCE**

The London Majors shall not seek to renew or amend their existing liquor licence for Labatt Park, 25 Wilson Avenue, unless they have first obtained the consent of the Municipal Council (which consent may be withheld).

**NON EXCLUSIVE USE**

The agreement allows for exhibition, regular season, playoff games and practice dates for high calibre men's amateur baseball as part of the Intercounty Baseball League.

The City agrees not to enter into licence agreements with a "professional" baseball team for the use of Labatt Park during the term of this agreement.

#### **BASEBALL COMMUNITY COMMENTARY**

The London and District Baseball Association and the London Badgers represent a large number of the minor and adult baseball players in the city. They are the other prominent users of Labatt Park.

The LDBA and London Badgers have agreed with the priority scheduling granted to the London Majors. We have a priority use protocol in place that puts Intercounty League use behind professional baseball but ahead of all other users. We will continue to follow this practice.

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 best used for National and Provincial Baseball events and London Major Baseball games to provide the necessary amenities for spectators.

However daily utilization of the park by local minor amateur and men's amateur teams keeps the park active throughout the season and showcases the park to minor sport organizations throughout Canada.

<b>FINANCIAL IMPACT</b>
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Commercial/Professional baseball use of Labatt Park has required that the user pay 100% of the direct operating cost of their use of the facility.

Traditionally, community use of Labatt Park is heavily subsidized where current users pay only a small portion of the cost of operating the Labatt Park stadium. The adult fee of \$ 137.83 is in line with neighbourhood premier park fees to encourage community use of Labatt Park by the community organizations. These local organizations do not utilize the entire facility to the same extent of the London Majors. Fees that reflect full cost recovery for the use of this park would make it a cost prohibitive alternative for the local community.

Although planning to become a not-for-profit organization in 2013, the London Majors operate similarly to a commercial entity, providing entertainment by charging admission, selling food and merchandise, selling liquor and selling advertising at Labatt Park.

The London Majors have paid a council approved fee for their Inter County League games that were established several years ago and fee increases have been in line with inflation. This fee did not reflect the current needs and expectations of the Majors relative to their use and the value received by playing in Labatt Park.

The revenue that will be received was anticipated and is included in the 2013 Parks and Recreation operating budget.

#### **FEE SCHEDULE**

It is our recommendation that a fee of \$8,700.00 plus HST per annum be collected from the London Majors baseball Team in accordance with the attached licence agreement for the 2013 and 2014 seasons. Additional games will incur a fee of \$253.38 plus HST. The Final Series Playoff games and league all-star games will be subject to an additional per game fee of \$325.00 plus HST due to increased staffing needs to support the larger attendance traditionally present during the final series.

This two year agreement will allow the London Majors two years with a set fee to establish their business plan while participating in the community engagement process of the new fee developments that may be proposed for the 2015 season. Following the completion of the 2014 season a new rate structure will be established in accordance with a revised Sport Facility Pricing Framework. Any fee increase would be implemented over a set period of time to allow

for a reasonable increase per annum. Guidelines will be set to determine appropriate fees for youth, adult, not for profit and commercial organizations.

This agreement will grant the London Majors exclusive and non-exclusive use of Labatt Park including concessions, souvenir, storage and locker room facilities.

**CONCLUSION**

City staff have been working with the London Majors and facilitating their use of Labatt Park for many years. We are pleased to have them represent our City as part of the Intercounty Baseball League. We believe this agreement will build on the relationship between the parties and establish fees for the services and amenities provided by the City and define the roles and responsibilities of the parties.

<b>SUBMITTED BY:</b>	<b>RECOMMENDED BY:</b>
<b>SCOTT STAFFORD DIVISION MANAGER PARKS &amp; COMMUNITY SPORTS</b>	<b>WILLIAM C. COXHEAD MANAGING DIRECTOR PARKS &amp; RECREATION</b>

c Lynn Marshall, Solicitor  
Anna Lisa Barbon, Finance

Attachments

Bill No. 175  
2013

By-law No. A.-\_\_\_\_\_

A By-law to authorize and approve a Licence Agreement between London Majors Baseball Corporation and The Corporation of the City of London; and to authorize the Managing Director of Parks and Recreation, 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 "1" to this by-law between London Majors Baseball Corporation and The Corporation of the City of London for non-exclusive use of Labatt Park, is hereby authorized and approved.
2. The Managing Director of Parks and Recreation, 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 Managing Director of Parks and Recreation, 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 on April 16, 2013.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First reading -  
Second Reading -  
Third Reading -

## SCHEDULE 1

This Agreement made in triplicate as of the (\_\_\_\_) day of April 16, 2013.

B E T W E E N:

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

-and-

LONDON MAJORS BASEBALL CORPORATION.  
(the "Club")

WHEREAS the Club owns and operates a baseball team known as the London Majors, which team is a franchise of The Intercounty Baseball League;

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.
- 1.2 The City agrees not to enter into licence agreements with other professional baseball teams for the use of Labatt Park during the term of 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, Instructional Clinics, Team Events
    - i) The Club shall be allowed to use the Facility for the Club's regular season games, exhibition games and practices in conjunction therewith, subject to the provisions of this Agreement.
    - ii) The Club shall be allowed to use the Facility for the Club's team events; exhibition, playoff games and potential league all star game subject to additional applicable licence rates.
    - iii) The Club shall be allowed to use the facility for Clinics (youth baseball skill development camps and associated Joe Rookie League). The Club will be limited to six five day clinics during the months of June, July and August, dates and times to be mutually agreed on by the parties.
    - iv) 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 1<sup>st</sup> date, which shall be allocated by the City. The City shall inform the Club of the availability of the July 1<sup>st</sup> date by November 1 of the previous year. This priority shall be enjoyed only from April 15<sup>th</sup> to October 31<sup>st</sup> 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 January 31<sup>st</sup> of each year during the term of this Agreement the Club's schedule for the year. Should the Club fail to provide the schedule in writing by January 31<sup>st</sup> (unless the Intercounty Baseball League "IBL") schedule is not finalized at that time, 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.
    - v) 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 while respecting the Club's priority scheduling practice.
    - vi) 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.

- vii) 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. The City shall inform the club of the blackout dates by November 1 of the previous year.

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 by no later than 11:59pm 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 Roy McKay Clubhouse will be available for use at no extra charge for pre and /or post game receptions. The Club is responsible for damage or vandalism that may occur to the Roy McKay clubhouse while in use by the Club.

c) Concession Facilities

- i) The Club shall be allowed to operate food concessions from both concession outlets and souvenir/liquor sales from the souvenir booth. The Club's use of the 1st base concession outlet shall be non-exclusive. The Club's use of the 3<sup>rd</sup> base concession outlet shall be exclusive. The club shall have non-exclusive use of the souvenir booth.
- 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 permit. Other park users will determine their concession needs by April 15<sup>th</sup> prior to the upcoming season.
- 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 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.
- vii) The Club shall be allowed to use the Facility for the Club's team events; playoff games and potential league all star game subject to applicable licence rates.

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. The Club may leave the advertising signs in place for the duration of the licence agreement. The Club may place advertising signs on the 40 foot section under the scoreboard during their games. These signs under the scoreboard must be removed after the Club's game.

- ii) Installation and removal of the signs shall be at the Club's expense in cooperation with City staff.
  - 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 unless damaged by city staff.
  - iv) All advertising shall comply with the City of London Council Policy on advertising (Appendix 17(9A), viewable at [www.London.ca](http://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. Additional advertising may not cover the Club's advertising during the Club's games and events. The cost of removing signing for the Club's events will be that of the city or team that places the additional advertising that is covering the Club's advertising.
  - vi) 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.
- e) Storage Facilities
- i) The Club shall be permitted exclusive use to the storage area under the 1<sup>st</sup> base side of the home plate grandstand.
  - ii) The Club shall, at its expense, be responsible for all security for the Storage Facilities. The City shall not be responsible for any damage to the Storage 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 Storage Facilities or the Facility.
  - iii) The Storage 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 Storage Facilities shall be complied with.
  - iv) The Club shall be allowed to use the Facility for the Club's team events; playoff games and potential league all star game subject to applicable licence rates.
  - v) The Club shall be permitted to use the Storage Facility during the off season for the purpose of equipment storage.

### **3.0 TERM**

3.1 The Licence and permission hereby granted shall commence April 16, 2013 and shall terminate and be fully at an end on October 31, 2014, subject to earlier termination as provided in this Agreement.

### **4.0 FEES (Canadian Currency)**

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

- i) for the period April 16, 2013 to October 31, 2013 the sum of \$ 8,700.00;
- ii) for the period April 16, 2014 to October 31, 2014 the sum of \$ 8,700.00;

The said licence fee shall be for the Club's use of the Facility for 21 regular season games; 18 Practices; 2 Exhibition Game dates; 29 days of summer instructional camps including the Joe Rookie League game; 3<sup>rd</sup> base locker room; concession and storage. In addition, the licence fee for early round playoff games, exclusive of H.S.T. or other applicable tax shall be \$253.38 per game during the agreement. Final round playoff games and League All-Star game will be subject to a licence fee of \$325, exclusive of HST or applicable tax during the agreement. All other team events are subject to an additional fee.

- 4.2 i) The Club agrees to pay the rental fee for each year of the Agreement in payments of \$500 plus HST due April 16th, followed by 3 equal payments of \$2733.33 plus HST due June 1, July 2 and August 1st of each year of the agreement. Final playoff game invoices due within 45 days of the last playoff game.

## 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 Intercounty Baseball League, and that where the Club is no longer in good standing with The Intercounty Baseball League, 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 City's Managing Director of Parks and Recreation, or his or her written designate. 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 Managing Director of Parks and Recreation, 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 charged, 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. For greater certainty, the Club shall pay H.S.T. or other applicable tax for the use of the Facility.
- 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. The Club shall not seek to renew or amend their existing liquor licence or obtain a new liquor licence for the Facility unless they have first obtained the consent of the Municipal Council (which consent may be withheld).

## **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; and
  - h) Attendants during game time to perform grounds maintenance and assist with operational concerns.
  - i) All utility services, scoreboard and sound systems inspected prior to April 15<sup>th</sup> each season.
- 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

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 or is responsible for, 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. Any equipment, articles, chattels and fixtures not so removed shall become the property

of the City, and the City may dispose of the same as the City deems fit, and the City shall not be liable to the Club for any such disposition.

- 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:

London Majors Baseball Corporation c/o Scott Dart and Roop Chanderdat  
1669 Westdel Bourne  
London, On N6K 4R1

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 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 City Manager or written designate.

- 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 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 10.16 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 their respective signing officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

Joe Fontana, Mayor

Catharine Saunders, City Clerk

LONDON MAJORS BASEBALL.

Per:  
Scott Dart, Owner

I/We have authority to bind the Corporation.