AGREEMENT MADE UNDER SECTION 41 OF THE PLANNING ACT, R.S.O. 1990

THIS AGREEMENT made this __________ day of ______________, 2017.

BETWEEN:

THE CORPORATION OF THE TOWN OF ST. MARYS

(Hereinafter called the “Town”)

OF THE FIRST PART

AND:

CANADIAN BASEBALL HALL OF FAME AND MUSEUM

(Hereinafter called the “Tenant”)

OF THE SECOND PART

WHEREAS the Canadian Baseball Hall of Fame and Museum is the tenant of the lands described as PART LOT 35, THAMES CONCESSION, BLANSHARD, PART LOTS 20 AND 21, CONCESSION 17, BLANSHARD, PARTS 1, 2, 3 AND 4 44R-4130; S/T EASEMENT OVER PART 3 44R-4130 AS IN R238806; S/T STM 14779; ST. MARYS, in the Town of St. Marys in the County of Perth hereto being all of PIN 53245-0139(LT) all in the Registry Office for the Land Titles Division of Perth (No. 44) (hereinafter referred to as the “Lands”).

AND WHEREAS the Town has imposed the provisions of Section 41 of the Planning Act, R.S.O. 1990 in respect to the land;

AND WHEREAS this Agreement is being entered into by the parties hereto as a condition to the approval of the plans and drawings referred to in Subsection 4 of Section 41 of the Planning Act, R.S.O. 1990;
AND WHEREAS this Agreement shall be registered against “the lands” to this Agreement and the Town is entitled to enforce the provisions thereof against the Tenant and, subject to the provisions of the Registry Act and the Land Titles Act, any and all subsequent Tenants of the land, in accordance with Subsection 10 of Section 41 of the Planning Act, R.S.O. 1990;

NOW THEREFORE WITNESSETH that for the sum of TWO DOLLARS ($2.00) paid to the Town by the Tenant (receipt whereof is hereby acknowledged), and in consideration of the Town approving the plans and drawings for the development of “the lands”, the Tenant covenants and agrees with the Town to provide, to the satisfaction of and at no expense to the Town, the following:

1. The Tenant Agrees:

   (a) that all buildings and structures to be erected on the subject property shall be located in accordance with the building and structure locations as shown on Drawing 1 and Drawing 2 attached hereto as part of Schedule “A”;  

   (b) that if required, all utility services to the property line including sanitary sewers and appurtenances, storm sewers and approved storm water management, and water main and appurtenances be installed under the authority and supervision of the Town of St. Marys. Utility service installations shall be facilitated by the Town, at the request of the proponent. The proponent shall be responsible for any and all costs associated with the required utility services. Utility services shall be according to Drawing 1 and Drawing 5 attached hereto as part of Schedule “A”;
(c) that the internal roadways, driveways and parking spaces shall be designed and located as shown on Drawing 1 and Drawing 5 attached hereto as part of Schedule “A”; and hard surfaced with asphalt as detailed on Drawing 1 attached hereto as part of Schedule “A”;

(d) that landscaping shall be provided in accordance with Drawing 1 attached hereto as part of Schedule “A”;

(e) to provide tree protection to the extent of the drip line during construction for existing trees to be retained;

(f) that sediment control fencing shall be provided for the site during construction;

(g) that site grading for the immediate project area shall be as shown on Drawing 5 attached hereto as part of Schedule “A”;

(h) that the Tenant agrees and acknowledges that it shall be their sole responsibility to ensure that storm water flows are managed within their property limits. The Tenant shall be required to complete all works necessary to correct any drainage issues that are determined to be the result of the immediate project area;

(i) that the Tenant shall submit to the Town a Master Grading Plan and Storm Water Management brief for the entire property as described in the scope of work contained in the MTE proposal for Engineering Services dated October 4, 2017, which is attached hereto as Schedule “B”;

(j) that if the Master Grading Plan and Stormwater Management brief determines that the grading of the property is such that storm water is draining onto or across adjacent properties, the Owner and the Town agree to meet to review
and determine the extent of the impact to the adjacent properties and how best to confine all storm water flows within the Owners property.

(k) that lighting shall be provided such that there is no spillage onto adjacent properties;

(l) that signage shall be posted to the satisfaction of the Town by the Tenant designating the “Fire Route” as shown on Drawing 1 attached hereto as part of Schedule “A”;

(m) the development on the Lands including but not limited to driveways, curbing, buildings, structures, paved areas, landscaping and site grading shall be maintained at the sole risk and expense of the Tenant on an ongoing basis;

(n) that any future development on the Lands shall be to Town standards and the provisions of the Town’s Zoning By-law in effect at the time of development;

(o) that all uses on the Lands and within the buildings on the Lands shall be in accordance with the provisions of the Town’s Zoning By-law Z1-1997, as amended.

2. Schedule “A” consists of the following drawings:

a) Drawing One prepared by Marklevitz Architects Inc. on September 15, 2017, and revised on October 6, 2017, and numbered as A0 and having a project number as 2863-12;

b) Drawing Two prepared by Marklevitz Architects Inc. on September 15, 2017, and revised on October 6, 2017, and numbered as A0.1 and having a project number as 2863-12;
c) Drawing Three prepared by Marklevitz Architects Inc. on September 15, 2017, and revised on October 6, 2017, and numbered as A1 and having a project number as 2863-12;

d) Drawing Four prepared by Marklevitz Architects Inc. on September 15, 2017, and revised on October 6, 2017, and numbered as A2 and having a project number as 2863-12;

e) Drawing Five prepared by MTE on October 6, 2017, and revised on October 12, 2017, and numbered as C2.1 and having a project number of 37588-300;

f) Drawing Six prepared by R. J. Burnside & Associates Limited on September 19, 2013 and numbered as C1 and having a project number as 300034126;

g) Drawing Seven prepared by MTE on November 23, 2012, and revised on August 9, 2013, and numbered as C2.1 and having a project number as 37588-200;

h) Drawing Eight prepared by McNeil Surveying Limited, Ontario Land Surveyors on September 1, 2006 and having a file number of 9145 (L);

i) Drawing Nine prepared by Archibald, Gray & McKay Ltd. on June 20, 2003, and having a file number of SM-CEM-7-1 and a plan number of 8-L-2776-Z;

j) Drawing Ten prepared by Donald W. J. McNeil Limited, Ontario Land Surveyor on March 2, 1995 and having a file number of 94-5082-2 (L);

k) Drawing Eleven prepared by Blue Jay Irrigation on November 20, 2015, and having a job number of REC/DRAW_1.

3. Schedule “A”, as described in paragraph 2. above and attached hereto shall form part of this Agreement.
4. Drawing 1 shall be read with reference to information provided on Drawing 6, Drawing 7, Drawing 8, Drawing 9, Drawing 10 and Drawing 11 attached hereto as part of Schedule “A”.

5. The Tenant shall enter into a Separate Agreement for electricity with Festival Hydro Inc.

6. The Fire Route and all entrances to the building shall be kept clear of any obstructions including snow accumulation at the responsibility of the Tenant.

7. The Tenant shall be responsible for the cost of signage and the installation of said signage required for this site including but not limited to Fire Route signage and directional signage.

8. During construction the Tenant shall be responsible for sediment control and shall execute a sediment control plan for the site.

9. The Tenant agrees that the abutting street(s) to be used for access during construction shall be kept in good and usable condition during the said construction and all necessary care will be taken to see that mud and soil is not tracked or pulled onto any public street or sidewalks. If damaged or muddied, such streets or sidewalks shall be restored and/or cleaned up by the Tenant at his own expense. The Tenant acknowledges that he has the responsibility to correct or clean muddied streets used for access during construction. If the Tenant fails to complete said work, then the provision of paragraph 13 of this Agreement shall apply.

10. The Tenant agrees to provide to the Town Engineering and Public Works Department engineer stamped as-built drawings to show all municipal service locations as well as the locations of the irrigation system for the property.
11. Minor adjustments to the requirements of this Site Plan Agreement may be made subject to the approval of the Town provided that the spirit and intent of the Agreement is maintained. Such minor adjustments shall not require an amendment to this Agreement; however, the written approval of the Town is required before such minor adjustments can be made.

12. Nothing in this Agreement constitutes a waiver of the obligation of the Tenant to comply with the Zoning By-law of the Town, Ontario Building Code or any other By-laws of the Town or any restrictions or regulations lawfully imposed by any other authorities having jurisdiction in connection therewith.

13. In the event of the failure by the Tenant to comply with any of the provisions of this Agreement, the Town, its servants or agents, on seven (7) days notice in writing to the Tenant of its intention and forthwith in the case of any emergency, shall at its sole discretion have the right to rectify such failure to comply to its satisfaction and recover the expense incurred by the Town in a like manner as municipal taxes.

14. The Tenant agrees to deposit with the Town a refundable security deposit in the amount of Ten Thousand Dollars ($10,000.00) at the time of application for a building permit so as to ensure due performance of the requirements of this Agreement and to repair damaged public services including curb, road and sidewalk. The security deposit shall be refunded without interest or penalty when the Tenant’s architect or engineer provides a certificate to the Town that the conditions of this Agreement have been completed and any damaged public services have been repaired to the satisfaction of the Town. Furthermore, the Tenant agrees to deposit with the Town, at the time of application for building permit, a refundable security deposit in the amount of Five Thousand Dollars.
($5,000.00) for landscaping as outlined in paragraph 1(d), and for grading as outlined in paragraphs 1(g) and 1(i). The security deposit shall be refunded without interest or penalty when the Tenant’s Landscape architect and/or engineer provides a certificate to the Town that the landscaping and grading, for which the deposit covered, has been completed in accordance with this agreement.

15. If any notice is required to be given by the Town to the Tenant in respect to this Agreement, such notice shall be sent by registered mail, registered courier or delivered personally by the Town employee or its agent to:

Scott Crawford  
Canadian Baseball Hall of Fame and Museum  
140 Queen St. E.  
PO Box 1838  
St. Marys, ON N4X 1C2

or to such other addresses of which the Tenant has notified the Town in writing, and any such notice mailed, sent or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

16. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement.

17. This Agreement shall be registered against the Lands by the Town and all costs associated with the said registration shall be the responsibility of the Tenant. The covenants, agreements, conditions and understandings herein contained on the part of the Tenant shall run with the Lands and shall enure to the benefit of and be binding upon
the parties hereto and their respective successors, heirs, executors, administrators and assigns.

18. Execution of this Agreement shall be deemed to be authorization by all parties to legal counsel for the Town to register same in the appropriate Land Titles Office without further written authorization.

19. The failure of a Party at any time to require performance by the other Party of any obligation under this Agreement shall in no way affect the first Party’s right thereafter to enforce such obligation, nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

20. The parties hereto covenant and agree that at all times and from time to time hereafter upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement including any amendments to this Agreement required to effect the registration of this Agreement.

21. The parties hereto acknowledge and agree that this agreement is further to and does not remove any of the Tenant’s obligations under any prior Agreements.

22. The Tenant agrees on behalf of itself and its heirs, executors, administrators, successors and assigns to indemnify the Town from all losses, damages, costs, changes and expenses which may be claimed or recovered against the Town by any person or persons arising either directly or indirectly as a result of any action taken by the Tenant pursuant to this agreement.
23. The Tenant hereby covenants and agrees to save harmless the Town from any loss whatsoever arising out of or pursuant to the execution of this Agreement and the issuing of a building permit whether final or conditional for any construction on the Lands. This indemnification shall apply to all claims, demands, costs and expenses in respect to the development of the Lands as set out in this Agreement.

**IN WITNESS WHEREOF** the Tenant has hereunto set its hand and seal and the Town has hereunto affixed its corporate seal under the hands of its Mayor and Clerk.

Dated this ______ day of October, 2017.

**CANADIAN BASEBALL HALL OF FAME AND MUSEUM**

Per: _____________________________________  
Adam Stephens

Per: _____________________________________  
Scott Crawford  
(We have authority to bind the Corporation.)

Dated this ______ day of October, 2017.

**THE CORPORATION OF THE TOWN OF ST. MARYS**

Per: _____________________________________  
Mayor: Al Strathdee

Per: _____________________________________  
CAO/Clerk: Brent Kittmer  
(We have the authority to bind the Corporation.)
NOTES TO SPA

1. It is the Tenant’s responsibility to fulfill the obligations contained in this Site Plan Agreement. It is also the Tenant’s responsibility to submit a request for the refund of deposits in writing when all of the work has been completed to the standards of this Site Plan Agreement.

2. The Tenants shall enter into a separate agreement for electricity with Festival Hydro Inc., 1887 Erie Street, PO Box 397, Stratford ON N5A 6T5, 519-273-4703.

3. Any sign erected on the subject property shall be in conformity with the Town’s current sign by-law. The Tenant shall apply for a separate sign permit.
Schedule “A”

Attach Drawings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.
Schedule “B”