

**SOUTHWEST COMMUNITY CENTRE
JOINT VENTURE AGREEMENT**

MEMORANDUM OF AGREEMENT made as of the ____ day of June, 2016.

AMONG:

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

OF THE FIRST PART

- and -

YMCA OF WESTERN ONTARIO (the "YMCA")

OF THE SECOND PART

- and -

LONDON PUBLIC LIBRARY BOARD (the "Library")

OF THE THIRD PART

WHEREAS the City has identified the need for the construction and operation of a multi-use community facility in the southwest portion of the City;

AND WHEREAS the City owns Lands described in Schedule "A" hereto which have been identified as appropriate and desirable for the construction of a multi-use community facility;

AND WHEREAS the City, the YMCA and the Library have determined that it is in their mutual best interests to enter into a joint venture, on the terms and conditions set forth herein, to provide for the design, construction and operation of the multi-use community facility on the Lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual premises and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. General Interpretation

1.1 Definitions.

For the purposes of this Agreement, the terms set forth below shall have the meanings ascribed thereto:

- (a) “**Annual Business Plan**” means the plan to be developed annually by the YMCA outlining a comprehensive budget for operations of the YMCA premises and the Facility, excluding the portions of the Facility occupied by the arenas and Service London space and the Library, for each fiscal year;
- (b) “**Approved Lender**” means a Canadian Chartered Bank or Loan and Trust Company that provides financing for the YMCA's Capital Contribution;
- (c) “**Arena and Service London Lease**” means the lease between the Joint Venture, as landlord, and the City as tenant, pursuant to which a portion of the Facility will be leased to the City to use as an arena and Service London kiosk, such lease to be in the form attached hereto as Schedule “D”;
- (d) “**Business Day**” means Monday to Friday, inclusive, excluding days recognized by the City as being holidays on which municipal offices are not open for business;
- (e) “**Capital Budget**” means the expected construction cost of the Facility, Project including, land acquisition costs and pre-construction “soft costs”, which includes, for greater certainty, remediation costs of the Lands, Construction Costs determined after a fixed-price construction price is agreed upon by the Contractor, all as determined and agreed upon by the Joint Venturers. The Capital Budget excludes furniture and equipment. Any amendment to the Capital Budget shall require the consent of the Joint Venturers;
- (f) “**Capital Contributions**” means the amount contributed by each of the Joint Venturers as provided in Section 6.1;
- (g) “**City**” means the Corporation of the City of London;
- (h) “**Concessions**” means any business operation within the Facility that is not directly related to the utilization of the Facility for recreational purposes which concessions will include, but not be limited to, food and beverage services, retail stores offering products or services including vending machines and advertising placed in or on the

- Facility, but does not include any concession located within the arena area;
- (i) "**Construction Budget**" means the Capital Budget, excluding land acquisition costs;
 - (j) "**Construction Costs**" means the actual costs incurred by the City in constructing the Facility;
 - (k) "**Facility**" means the multi-use community facility which is the subject matter of this Agreement consisting of, swimming pool(s), gymnasium, twin pad arena, community gathering space(s), lobby(s), specialized activity space(s) including a teaching kitchen, multipurpose meeting rooms, exercise facilities, offices, Service London space and a branch of the Library;
 - (l) "**Final Design**" means the Facility design proposed by the successful construction bidder and agreed upon by the Joint Venturers in accordance with this Agreement;
 - (m) "**General Contractor**" means Aquicon Construction Co. Ltd., and any substitute general contractor engaged by the Joint Venture;
 - (n) "**Joint Venture**" means the enterprise created pursuant to this Agreement;
 - (o) "**Joint Venturers**" means collectively, the City, YMCA and the Library and "Joint Venturer" means any one of the City, YMCA or the Library;
 - (p) "**Lands**" means the lands owned by the City more particularly described in Schedule "A" hereto on which the Facility is to be constructed;
 - (q) "**Library**" means the London Public Library;
 - (r) "**Library Lease**" means the lease between the Joint Venture, as landlord, and the Library, as tenant, pursuant to which a portion of the Facility will be leased to the Library to use as a public library, such lease to be in the form attached hereto as Schedule "E";
 - (s) "**Management Committee**" means the committee comprised of representatives of the City, YMCA and the Library, as provided in Section 3.2, who are charged with the executive management of the Joint Venture in accordance with the term of this Agreement;

- (t) **"Program Services and Access Agreement"** means the agreement among the City, YMCA and the Library defining the responsibilities and rights of the parties to provide certain specified programming and services at the Facility, such agreement to be in the form attached hereto as Schedule "F";
- (u) **"Project"** includes the Facility and the Land;
- (v) **"Project Interest"** means the interest of a Joint Venturer in the Project from time to time which initial interests are addressed in Section 2.3 of this Agreement;
- (w) **"Reserve Fund"** means the fund established by the Joint Venture and maintained by the YMCA for the purposes of financing capital maintenance and capital repairs to the Facility;
- (x) **"Substantive Change"** means a change (or series of changes to a particular aspect of the Facility) to the Final Design that results in a substantial alteration to the square footage of the Facility or any component thereof, or any material increase in the expected construction costs in excess of the Construction Budget;
- (y) **"YMCA"** means the YMCA of Western Ontario;
- (z) **"YMCA Lease"** means the lease between the Joint Venture, as landlord, and the YMCA as tenant, pursuant to which a portion of the Facility will be leased to the YMCA, such lease to be in the form attached hereto as Schedule "C";

1.2 Interpretation.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) "this Agreement" or "hereof" means this Joint Venture Agreement as it may from time to time, be supplemented or amended;
- (b) headings inserted in this Agreement are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (c) any reference herein to generally accepted accounting principles shall mean financial statements prepared in accordance with Canadian accounting standards for not-for-profit organizations,

which are of general application in the Province of Ontario, from time to time;

- (d) all references to currency herein are references to Canadian currency;
- (e) any reference to an entity shall include and shall be deemed to be a reference to any entity that is a successor to such entity;
- (f) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural and vice versa;
- (g) except as expressly provided to the contrary in this Agreement, each section, part, term and/or provision of this Agreement will be considered severable. If for any reason any part of this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a Court or agency having valid jurisdiction, it will not impair the operation or have any other effect upon any other part of this Agreement as may remain otherwise intelligible and that part will continue to be given full force and effect and bind the parties. The invalid part or parts will be considered not to be a part of this Agreement.
- (h) the following schedules are attached to this Agreement and are considered to be a part of this Agreement:

Schedule "A"	Description of the Lands
Schedule "B"	Site Plan
Schedule "C"	YMCA Lease
Schedule "D"	Arena and Service London Lease
Schedule "E"	Library Lease
Schedule "F"	Program Services and Access Agreement
Schedule "G"	Capital Budget

2. Joint Venture

2.1 Formation and Status of the Joint Venture.

The City, YMCA and the Library acknowledge that the Joint Venture has been formed as a joint venture pursuant to the terms of this Agreement. Ownership interests in the Project will be in the form of the Project Interests.

2.2 No Partnership.

No partnership is created by this Agreement. Nothing contained in this Agreement shall or shall be deemed to constitute the Joint Venturers as partners nor as agent of each other nor any other relationship whereby the Joint Venturers could be held liable for any act or omission of the others. None of the Joint Venturer shall have any authority to act for the others or to incur any obligation on behalf of the other Joint Venturers or of the Joint Venture save as specifically provided by this Agreement. Each Joint Venturer covenants to indemnify the others from all claims, losses, costs, charges, fees, expenses, damages, obligations and responsibilities incurred by a Joint Venturer by reason of any action or omission of the other outside the scope of the authority specifically provided by this Agreement.

2.3 Project Interests.

The Project Interest of each party shall be as follows:

City	75.13%
Library	8.26%
YMCA	16.61%

In the event that the actual cost of the Project is less than the estimate of \$53,865,965, inclusive of taxes, the Capital Contributions of the parties will be reduced as provided in Section 6.5.

Any contributions made by the City pursuant to Section 6.5 hereof shall be added to the initial Capital Contribution of the City.

2.4 Name of the Joint Venture.

The Joint Venture shall carry on business under the name "Southwest Community Centre Joint Venture" or such other name or names as the Management Committee may determine, from time to time.

2.5 Fiscal Period.

The fiscal period of the Joint Venture ends on the 31st day of December in each and every year or such other date as the Management Committee may determine, from time to time.

2.6 Business and Powers of the Joint Venture.

The business of the Joint Venture shall be to design and operate the Facility. The Joint Venture shall not, without the consent of the Joint Venturers, conduct any other business. The Joint Venture shall have the

power to do any and every act and thing necessary, proper, convenient or incidental to the accomplishment of the foregoing.

2.7 Transfer or Encumbering of Interests.

A Joint Venturer shall not assign, transfer, convey, mortgage, charge, hypothecate or grant a security interest in or over its Project Interest without the prior written consent of the other Joint Venturers which consent may be arbitrarily withheld.

Notwithstanding the foregoing, the City and the Library acknowledge that the YMCA intends to borrow funds necessary for part of its Capital Contribution from an Approved Lender. The City and the Library agree that the YMCA may mortgage or grant a security interest to the Approved Lender in and to the YMCA's interest in the YMCA Lease provided that the following are complied with:

- (a) The Approved Lender agrees to give written notice to the City and the Library of any default by the YMCA in respect to the loan prior to taking any steps to enforce the security of the Approved Lender;
- (b) The Approved Lender agrees that the City and the Library shall have a reasonable period to step-in and remedy or cure the default of the YMCA or to assume the loan and take over the Project Interest of the YMCA.

2.8 Title to the Lands.

The City shall retain legal and beneficial title to the Lands.

2.9 Head Office and Mailing Address.

The head office and mailing address of the Joint Venture shall be:

c/o YMCA of Western Ontario
382 Waterloo Street, London, ON, N6B 2N8

or such other address as the Management Committee may determine, from time to time.

2.10 Accountants

The accountants for the Joint Venture shall be the accountants of the YMCA from time to time. Initially, the accountants of the YMCA are PricewaterhouseCoopers LLP. Notwithstanding the foregoing, if at any time the YMCA changes its accountants, and the City and the Library do

not want such replacement accountants of the YMCA to be the accountants for the Joint Venture, the City and the Library shall provide written notice to the YMCA and in that event the Management Committee shall appoint new accountants for the Joint Venture.

2.11 Officers.

The Management Committee shall create such offices and designate the authority of such individuals as are appointed to such offices as the Management Committee, in its discretion determine advisable.

3. Management of the Joint Venture

3.1 Management Committee.

Overall executive control of the Joint Venture shall lie with the Management Committee. The Management Committee will provide executive oversight for all material aspects of the Joint Venture and the Facility operations but it is not intended or expected to become involved in the day to day operating decisions other than to generally set policy and approve operational annual plans and budgets.

Matters which shall be determined by the Management Committee shall include, but not be limited to:

- (a) approval of the Annual Business Plan;
- (b) approval of any expenditures outside of those approved in the Annual Business Plan that are in excess of Five (5%) percent of the approved annual operating budget;
- (c) approval of contracts for third party material service providers or Concessions for terms in excess of five (5) years and where the value of the contracted service exceeds \$50,000.00 per year;
- (d) recommending to the City, YMCA and the Library for consideration, any sale or disposition of the Facility or a material portion of it which would include the subletting of the entire Facility or a significant portion thereof, to a third party;
- (e) approval of any material exterior addition to the Facility. Such approval shall be required in addition to the reference of such addition in the Annual Business Plan;
- (f) monitoring of the maintenance standards of the Facility;

- (g) the addition of any other participant in the Joint Venture;
- (h) approving any debt of the Joint Venture. It is hereby understood that any such debt shall be incurred solely for the purposes of the Facility; and
- (i) approval of any activity in the Facility that does not represent a traditional utilization of a multi-use recreational facility.

3.2 Composition of the Management Committee

The Management Committee shall be comprised of eight persons, four of whom shall be appointed by the YMCA, three of whom shall be appointed by the City, and one of whom shall be appointed by the Library. The appointees of the YMCA shall be members of the YMCA administration including the Chief Executive Officer of the YMCA. The members appointed by the City shall be from City's administration. The member appointed by the Library shall be from the Library administration.

4. **Conduct of the Business of the Management Committee**

4.1 The Chair.

The Chair of the Management Committee shall be the Chief Executive Officer of the YMCA, but the Chair shall not have a second or casting vote in the event of an equality of vote. In the absence of the Chair, the representatives of the City, the YMCA and the Library present at the meeting shall select a chair from amongst themselves.

4.2 Quorum.

The quorum for a meeting of the Management Committee shall be five, including one each from the City, the YMCA and the Library.

4.3 Voting.

It is the intention that decisions of the Management Committee will be reached by consensus. On any matter requiring a vote, each member of the Management committee present at the meeting shall have one vote.

4.4 Deadlock.

In the event that the Management Committee is unable to reach a decision or a dispute arises with respect to any matter for which the Management Committee has responsibility or a dispute arises with respect

to any provision of this Agreement, the matter shall be referred to the dispute resolution provisions of this Agreement.

4.5 Resolutions in Lieu of Meeting.

A resolution in writing, signed by all of the members of the Management Committee, is as valid as if such resolution had been passed at a meeting of the Management Committee.

4.6 Meetings.

The Management Committee shall meet at the call of the Chair provided that any two representatives to the Management Committee may, on not less than five (5) days prior notice to the other representatives on the Management Committee convene a meeting for the purposes stated in such notice. Any notice of meeting shall designate the agenda for such meeting and shall be accompanied by such materials as are reasonably necessary to enable representatives to participate in the meeting on an informed basis. Notwithstanding anything contained herein to the contrary the Management Committee shall meet no less that two (2) times annually.

4.7 Meetings by Telephone/Teleconference.

Where all the members of the Management Committee present at or participating in the meeting have consented thereto, any member of the Management Committee may participate in a meeting of the Management Committee by means of conference telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously and a member participating in such a meeting by such means is deemed for the purposes of the meeting and this Agreement to be present at the meeting.

4.8 Contracts and Documents.

Subject to the terms thereof, all contracts and documents binding the Joint Venture shall require the signature(s) of such representatives of the Joint Venture as may be determined by the Management Committee, from time to time.

4.9 Bank Accounts.

The Joint Venture may maintain a separate bank account or bank accounts at such bank or trust company as the Management Committee shall, from time to time, determine. Any bank accounts shall be kept in the name of the Joint Venture and all cheques, bills, notes, drafts or other instruments

shall require the signatures of such individuals as the Management Committee may, from time to time, determine. All monies received from time to time for the account of the Joint Venture shall be paid immediately into those bank accounts for the time being in operation, in the same drafts, cheques, bills or cash in which they are received and all disbursements on account of the Joint Venture shall be made by cheque on such bank or trust company.

4.10 Committees.

The Management Committee may, from time to time, create Committees which will be charged with such responsibilities and authority as the Management Committee may determine. Committees shall be comprised of such individuals as are designated by the Management Committee and may include individuals who are not members of the Management Committee. Except to the extent prescribed by the Management Committee, committees shall establish their chair and meeting protocols.

4.11 Conflicts of Interest.

The Joint Venturers acknowledge that their respective representatives on the Management Committee will have conflicts of interest arise by virtue of their relationship with the YMCA, the City and the Library. Conflicts of interest arising as a result of such relationships need not be declared to the Management Committee. Except as aforesaid, any representative on the Management Committee shall declare a conflict of interest if such representative is a party to, has a material interest in or is related to a person who is a party to or has a material interest in any entity which is entering into or proposes to enter into a material contract with the Joint Venture. Any representative having such a conflict of interest shall refrain from voting on the issue, but an alternate for such representative may sit in the stead of and cast the vote of such representative or another nominee of the Joint Venturer that nominated the representative who declared a conflict may cast such representative's vote on the issue.

5. Construction Process

5.1 Schedule.

The Joint Venturers agree that tendering for construction of the Facility shall not occur until each of the Joint Venturers have made the Capital Contributions provided for in Section 6.1 or adequate provision has been made for such Capital Contributions satisfactory to the other Joint Venturers.

5.2 Design.

The Joint Venturers agree that they have determined, on a preliminary basis, the design of the Facility, which outlines the basic fundamental requirements for the Facility. Changes to the design may only be effected on the mutual consent of the Joint Venturers or in accordance with Section 5.4.

5.3 Tender Process.

Through a steering committee comprised of representatives of the Joint Venturers the selection of the General Contractor for the Facility has been made. The Construction Budget is subject to approval of City Council.

5.4 Final Design.

The City shall work with the General Contractor to develop and finalize the design for the Facility. The Final Design, when approved by the Management Committee, shall form part of the construction contract with the General Contractor and shall become the Final Design.

5.5 Construction Contract.

Subject to the approval of City Council above, the City shall enter into a fixed price guaranteed construction contract(s) with the General Contractor for the construction of the Facility in accordance with the Final Design. Subject to any changes in the Final Design, which shall be dealt with as provided in this Agreement, the City shall be responsible to deliver the Facility, fully constructed in accordance with the Final Design and at a cost within the Construction Budget. If the actual cost exceeds the Construction Budget, the City shall, by way of non-refundable contribution to the Joint Venture, cover the overrun which amount shall form part of the Capital Contribution of the City.

5.6 Alterations to Design.

In the event that a change suggested to the design by any Joint Venturer is not accepted by the other Joint Venturers, the Joint Venturer requesting the change shall have the option to have its suggested change to the design implemented, provided that such Joint Venturer shall agree to bear the cost of construction in relation to such design change, provided such change does not negatively impact the general appearance or economic operation of the Facility. The Joint Venturer requesting such change may, as part of the design, indicate that the change is to be treated, for the purposes of the tender to be received from prospective contractors of the Facility, as a provisional item to be priced separately

from the overall Facility construction cost. The change shall only form part of the Final Design in the event that the Joint Venturer making such suggested change accepts the pricing and the obligation of bearing the cost of such pricing when finally determined by the successful construction bidder through the course of the tender process. The cost of the change to the design shall be borne by the requesting Joint Venturer who shall pay to the City, by way of non-refundable contribution, the full cost of the change, such payment to be made in a manner to enable the City to pay the Contractor's draws against completion of the change. For greater clarity, the foregoing applies only to design changes which are not accepted by the Joint Venturers and which are actually incorporated into the Facility. For greater certainty, any amount contributed by a Joint Venturer toward the cost of the change to the design shall not form part of that Joint Venturer's Capital Contribution.

5.7 Alterations to Final Design.

If any Joint Venturer (herein referred to as the "Requesting Party") wishes to alter the Final Design as finally agreed upon by the Joint Venturers, the Requesting Party shall notify the other Joint Venturers (the "Receiving Parties") of the requested change (the "Change"). The City, shall then obtain a firm price for the Change, taking into account any savings related to the construction of the original design resulting from the construction of the Change. The Requesting Party shall then decide whether or not to approve the Change and shall indicate its decision to the City by notice in writing. The cost of the Change shall be borne by the Requesting Party who shall pay to the City, by way of non-refundable contribution, the full cost of the Change, such payment to be made in a manner to enable the City to pay the Contractor's draws against completion of the Change. For greater certainty, any amount contributed by a Joint Venturer toward the cost of the Change shall not form part of that Joint Venturer's Capital Contribution.

5.8 Dispute Relating to Changes.

The Receiving Parties may object to such change to the design or the Final Design only on the basis that the change negatively impacts the original design. Resolution of such disputes shall be attempted at the Management Committee and, if a deadlock occurs, resolved by reference to the dispute resolution provisions of this Agreement.

5.9 Construction Oversight

The City shall be responsible for the construction of the Facility and shall have authority to act in all matters pertaining to construction, including:

- (a) issuing requests for financing draws;
- (b) subject to the provisions hereof, authorizing change orders;
- (c) settling disputes with contractors or subcontractors;
- (d) certifying partial or total completion of the Facility.

5.10 Change Orders.

Unless a change order would result in a Substantive Change, the City is authorized to execute change orders in regard to the construction of the Facility. The City shall provide to the YMCA and the Library written reports of authorized change orders which shall set out the nature of the change and the effect of such change on the Final Design and Construction Budget. The YMCA or the Library may, within five (5) business days of receipt of each report, issue to the City a written objection that any change order (or series of change orders relating to a particular aspect of the Facility) has resulted or will result in a Substantive Change. The parties will immediately attempt to resolve such objection. If the parties are unable to resolve the objection, the matter shall be settled pursuant to the dispute resolution provisions of this Agreement.

6. CAPITAL CONTRIBUTIONS

6.1 Capital Contributions.

The Capital Budget is as set out in Schedule G hereto. The Capital Contribution of the YMCA to the Capital Budget shall be \$9,200,000.00, inclusive of taxes, unless reduced in accordance with the provisions of Section 6.5. The Capital Contribution of the Library to the Capital Budget shall be \$4,576,813.00, inclusive of taxes, unless reduced in accordance with the provisions of Section 6.5. The Capital Contribution of the City to the Capital Budget shall be equal to the amount of the Capital Budget less the Capital Contribution of the YMCA and the Library. Any amounts required to be funded by any Joint Venturer pursuant to Sections 5.6 or 5.7 hereof, shall be in addition to and shall not form part of the Capital Contribution of the Joint Venturer. For the purposes of the Development Charges Act, 1997 and the regulations made thereunder, the YMCA and the Library confirm that the Capital Contribution of the YMCA and the Library under this Agreement shall be applied by the City in the total funding formula for the Project as a contribution to the construction cost and soft costs (permit fees, consultant costs etc.) attributable to the Project.

6.2 Naming Rights.

The YMCA shall be entitled to have naming rights for the Project, subject to the prior approval of the City which approval is not to be unreasonably withheld; provided, however, the Library shall be entitled to separately name the Library space. The City retains the rights to name the arena and/or two (2) other suitable portions of the Project to recognize the contributions of the vendor of a portion of the Lands gifted to the City.

6.3 Government Grants.

In the event that grants are made by any federal or provincial authority which are specific to the Facility, the benefit of such grants shall be allocated by the YMCA, the City and the Library on the basis of their respective Project Interests. Where grants form part of global funding received by the YMCA, the City or the Library and the YMCA, the City or the Library, as the case may be, applies all or any part of such grant to the Project, the amount applied shall form part of the Capital Contribution of the contributing party.

6.4 Payment of Capital Contributions.

During construction of the Facility the City will administer payment of the contract price of the Facility and payments to the General Contractor and consultants engaged for the Facility.

The YMCA shall advance five (5%) percent of its Capital Contribution at the commencement of construction of the Facility and the balance of its Capital Contribution shall be paid two (2) months prior to the scheduled substantial completion date for the Facility. The Management Committee may develop a schedule for payment of the Capital Contributions which varies from the foregoing in order to properly fund payments required to be made to the Contractor.

The Capital Contribution of the Library shall be payable within thirty (30) days of the completion of the sale of the existing Westmount Library Branch or two (2) months prior to the scheduled substantial completion date for the Facility, whichever is later.

6.5 Under Budget/Over Budget.

Subject to the provisions of the construction contract with the General Contractor, if the projected Construction Costs exceed the Construction Budget other than by reason of changes occurring pursuant to Sections 5.6 or 5.7 hereof, the Parties shall work co-operatively to make adjustments to the Final Design to reduce the projected Construction

Costs as nearly as possible to the amount of the Construction Budget. If, following a value engineering exercise the actual cost of the Project exceeds the Capital Budget, the City shall advance the sum required to pay such additional amount, which advances shall form part of the Capital Contribution of the City.

If the actual cost of the Project is less than the Capital Budget, the Capital Contribution of the City shall be reduced accordingly, unless the amount by which the actual cost of the Project is less than the Capital Budget exceeds \$1,500,000.00, in which case the Capital Contributions of each Joint Venturer shall be reduced proportionately in respect of such amount in excess of \$1,500,000.00.

6.6 Termination Prior to Commencement of Construction

In the event that prior to the commencement of construction of the Facility (i) the Capital Budget is in excess of \$53,865,965.00, and the Management Committee is unable, through adjustments to the Final Design, to reduce the Capital Budget to \$53,865,965.00 or less, or if the Joint Venturers are unable to agree on the manner by which the portion of the Capital Budget in excess of \$53,865,965.00 is to be financed; or (ii) the Facility negatively impacts, in a material way, the YMCA or the Library such that such impact renders participation in the Joint Venture impractical or uneconomic; then, in the first case, any Joint Venturer, by notice to the other, or, in the second case, the YMCA or the Library, by notice to the City, may terminate the Joint Venture whereupon the parties agree:

- (a) that the business of the Joint Venture shall immediately cease and terminate, save and except for the winding up of any business operations or relations;
- (b) the Joint Venture shall prepare an accounting detailing the expenses and costs incurred by the Joint Venture since its inception as well as an accounting of advances made by each of the Joint Venturers to the Joint Venture;
- (c) the Joint Venturers shall each indemnify and contribute to the others to the extent necessary that each of the Joint Venturer contributes to the costs and expenses incurred by the Joint Venture since its inception up to the date of its termination in proportion to their respective Project Interests, taking into account any advances or contributions made by the Joint Venturers;
- (d) the Joint Venturers shall cooperate in preparing a joint news

release for the purposes of announcing the abandonment of the Facility project.

7. Material Agreements

7.1 YMCA Lease

The Joint Venture and the YMCA shall enter into the YMCA Lease in the form of the lease attached hereto as Schedule "C".

7.2 Arena and Service London Lease

The Joint Venture and the City shall enter into the Arena and Service London Lease in the form of the lease attached hereto as Schedule "D".

7.3 Library Lease

The Joint Venture and the Library shall enter into the Library Lease in the form of the lease attached hereto as Schedule "E".

7.4 Program Services and Access Agreement

The City, the YMCA and the Library shall enter into the Program Services and Access Agreement in the form of the agreement attached hereto as Schedule "F"

8. Day to Day Operations and Reporting

8.1 Primary Responsibility.

Responsibility for the day to day operations of the Facility, excluding the portions of the Facility occupied by the arenas and Service London space and the Library, shall be that of the YMCA. In this regard, for such portion of the Facility (which for greater certainty excludes the portions of the Facility subject to the YMCA Lease) the YMCA shall be responsible for the following:

- (a) development of the Annual Business Plan which shall include, but not be limited to:
 - (i) detailed budgets of revenues and expenses on go forward basis;
 - (ii) development and implementation of an equipment maintenance program;

- (iii) development of an equipment replacement and refurbishment program;
- (b) development and implementation of a marketing program designed to enhance revenue generation from the Facility;
- (c) implementation of a front office function that will oversee the set up and maintenance of proper books of record and accounting relating to the operations of the Facility;
- (d) execution of procurement in accordance with the Annual Business Plan;
- (e) establishment of employment practices and oversight of all human resource issues pertaining to the operation of the Facility;
- (f) implementation of compliance programs relating to laws and regulations affecting the Facility including environmental matters, employment equity matters, workplace safety and access issues.

8.2 YMCA Reporting Obligations

The YMCA shall provide to the Management Committee within the times hereinafter provided the following reports and budgets of the Joint Venture:

- (i) within thirty (30) days prior to the end of each lease year of the YMCA Lease, an annual business plan consisting of an annual operating budget of revenues and expenses and an annual capital and maintenance budget for the Facility including capital reserves;
- (ii) within one hundred and twenty (120) days of each calendar year end of the Southwest Community Centre Joint Venture, financial statements consisting of a statement of income or loss and a written statement indicating actual operating results and variance from the Annual Business Plan certified by the YMCA to be true and correct;
- (iii) within thirty (30) days of each month end financial statements consisting of a statement of income or loss and a written statement indicating actual operating results and variance from the annual business plan for the YMCA operations, the YMCA portion of the Facility and the common areas, certified by the YMCA to be true and correct.

The YMCA agrees to prepare and keep books and records related to the operations of the Facility in accordance with Canadian accounting standards for not-for-profit organizations.

8.3 Right to Audit

The Joint Venture shall have the right to engage, appoint and instruct an auditor to audit the books and records of the YMCA related to the Facility and the auditor shall report to the Management Committee as to the accuracy of the amounts certified by the YMCA. If any such audit by an auditor appointed by the Joint Venture discloses a negative variance of five (5%) percent or more from any specific certified expense item, the YMCA shall promptly pay to the Joint Venture the cost of such audit.

8.4 Standard of Operation.

The Joint Venturers agree that the Facility shall be operated and maintained in a commercially reasonable state of repair and in good operating condition consistent with the South London Community Centre, the Stoney Creek Community Centre recreational facility and the downtown YMCA facility.

The Management Committee shall develop the repair and maintenance standards required at the Facility consistent with the standards at the two facilities referenced above.

8.5 Related Party Contracts.

The Management Committee shall review all contracts (except those comprising the Schedules) between the Joint Venture and the YMCA, or the City or the Library, or any party related to the City or the YMCA or the Library to ensure that the terms of such contracts reflect terms and rates no less favourable to the Joint Venture as contracts negotiated between arm's length parties. Notwithstanding the foregoing, no such review will be required for "standard contracts" when the terms and rate are those generally available to the public. If the Joint Venture engages City, YMCA or Library personnel, the cost of such personnel to be charged to the Joint Venture shall be the cost to the City, the YMCA or the Library of such personnel plus five (5%) percent to reflect administrative costs and accurate time records shall be maintained to document work performed. With respect to a reviewable contract, the non-related Joint Venturers shall have the right to refer the matter to the dispute resolution provisions of this Agreement, despite the approval of the Management Committee, provided that all such Joint Venturer's representatives voted against approval.

9. Operational Losses/Surpluses

9.1 Operational Losses.

All operational losses arising from the operation of the Facility, excluding the portions of the Facility occupied by the arenas and Service London space and the Library, shall be the responsibility of the YMCA. The City and the Library shall have no obligation to provide funding to the Facility in excess of their Capital Contribution, except as otherwise provided in the Program Services and Access Agreement, the Arena and Service London Lease or the Library Lease.

9.2 Operating Surpluses.

Any operating surpluses generated from the operation of the Facility shall be applied firstly to fund the Reserve Fund and any excess shall be paid to the YMCA.

Notwithstanding the foregoing and for greater certainty, the City shall be responsible for the expenses associated with the operation of the arenas, and shall retain any revenue generated therefrom.

10. Reserve Fund

10.1 Lifecycle Study

The Joint Venturers agree to conduct a lifecycle study to determine the appropriate contributions to a reserve fund in order to provide the means to effect capital repairs and replacements to the Facility and its plant and equipment owned by the Joint Venture.

10.2 Establishment of Reserve Fund.

The YMCA agrees to establish and maintain the Reserve Fund in accordance with the provisions of the YMCA Lease.

11. DISPUTE RESOLUTION

11.1 Application.

The provisions of this section shall apply:

- (a) whenever the Management Committee is deadlocked and one of the Joint Venturers elects to refer the matter to dispute resolution; or

- (b) whenever a Joint Venturer has the ability to refer any matter in this Agreement to dispute resolution; or
- (c) whenever any issue arises with respect to the interpretation of this Agreement that the Management Committee is unable to resolve; or
- (d) whenever a party breaches or is alleged to have breached its obligations pursuant to this Agreement (such situation being hereinafter referred to as the "Dispute").

11.2 Administrative Review.

In the first instance, the Dispute shall be referred to the Chief Executive Officer of the YMCA, the Chief Administrative Officer of the City and the Chief Executive Officer of the Library (the "Reviewers") who shall review the Dispute and such evidence as they deem fit. If the Reviewers are unable to come to a resolution that is satisfactory to each of the Joint Venturers within fifteen (15) Business Days of the reference of the Dispute, then the Dispute may, at the option of any Joint Venturer, be referred to the next stage of the dispute resolution process. If the Reviewers come to a mutual decision, then the Joint Venturers agree to be bound by such decision.

11.3 Arbitration.

If the Dispute is not resolved pursuant to the foregoing provisions, then such Dispute shall be resolved by arbitration pursuant to the *Arbitration Act, 1991* (Ontario) and as provided in this Section and the decision shall be final and binding as between the parties and shall not be subject to appeal. Any arbitration to be carried out under this Section shall be subject to the following provisions:

- (a) the party desiring arbitration shall nominate an arbitrator and shall notify the other parties of such nomination. The notice shall set forth a brief description of the matter submitted for arbitration and, if appropriate, the Section, subsection or clause hereof pursuant to which such matter is so submitted. The other parties shall each, within fifteen (15) days after receiving such notice, nominate an arbitrator and the three arbitrators shall select a chairman of the arbitral tribunal from among themselves. If said arbitrators shall be unable to agree on the selection of such chairman, the chairman shall be designated by a judge of the Ontario Court of Justice (General Division) or any successor thereof upon an application by any Joint Venturer. The arbitration shall take

place in the municipality of London, Ontario and the chairman shall fix the time and place within the municipality of London, Ontario for the purpose of hearing such evidence and representations as the parties hereto may present and subject to the provisions hereof, the decision of the arbitrators or of any two of them in writing shall be binding upon the parties hereto both in respect of procedure and the conduct of the parties during the procedure and the final determination of the issues therein. The said arbitrators shall, after hearing any evidence and representations that the parties may submit, make the decision and reduce the same to writing and deliver one copy thereof to each of the parties. The majority of the arbitrators may determine any matters of procedure for the arbitration not specified herein;

- (b) if a party receiving notice of the nomination of an arbitrator by the party desiring arbitration fails within such fifteen (15) day period to nominate an arbitrator, the arbitrators nominated by the other Joint Venturers shall select a third arbitrator to act jointly with them. If said arbitrators shall be unable to agree on the selection of such arbitrator, the third arbitrator shall be designated by a judge of the Ontario Court of Justice (General Division) or any successor thereof upon an application by any Joint Venturer, and the three arbitrators shall select a chairman of the arbitral tribunal from among themselves. If said arbitrators shall be unable to agree on the selection of such chairman, the chairman shall be designated by a judge of the Ontario Court of Justice (General Division) or any successor thereof upon an application by any Joint Venturer. The arbitration shall take place in the municipality of London, Ontario and the chairman shall fix the time and place within the municipality of London, Ontario for the purpose of hearing such evidence and representations as the parties hereto may present and subject to the provisions hereof, the decision of the arbitrators or of any two of them in writing shall be binding upon the parties hereto both in respect of procedure and the conduct of the parties during the procedure and the final determination of the issues therein. The said arbitrators shall, after hearing any evidence and representations that the parties may submit, make the decision and reduce the same to writing and deliver one copy thereof to each of the parties. The majority of the arbitrators may determine any matters of procedure for the arbitration not specified herein Notwithstanding the foregoing, any arbitration may be carried out by a single arbitrator if the parties so agree, in which event the provisions of this

subparagraph (b) shall apply, mutatis mutandis;

- (c) if both parties receiving notice of the nomination of an arbitrator by the party desiring arbitration fail within such 15 day period to nominate their arbitrator, the arbitrator nominated by the party desiring arbitration may proceed alone to determine the dispute in such manner and at such time as he or she shall think fit and his or her decision shall, subject to the provisions hereof, be binding upon the parties.
- (d) the cost of the arbitration shall be borne by the parties as may be specified in such determination and the fees of the arbitrator shall not be limited by the *Arbitration Act, 1991* (Ontario).

11.4 Condition Precedent.

Submission to arbitration pursuant to the provisions of this Article 11 shall be a condition precedent to the bringing of any action with respect to this Agreement.

11.5 Scope of Arbitration Order.

The arbitrator(s) may order such relief as deemed appropriate in the circumstances and provided that the relief has been requested by one of the Joint Venturers or is a lesser form of the relief requested by one of the Joint Venturers or a combination of the forms of relief requested by the Joint Venturers. Relief may include, but is not limited to:

- (a) monetary award;
- (b) suspension of rights under this Agreement permanently or for a specified period;
- (c) specific order requiring a Joint Venturer to act or refrain from acting;
- (d) requiring a Joint Venturer to purchase the Joint Venture interest of another Joint Venturer.

12. DEFAULT AND TERMINATION

12.1 Defaults

If and whenever a Joint Venturer is in default of its obligations under this Agreement (the "Defaulting Joint Venturer") then either of the other Joint

Venturers (the "Non-Defaulting Joint Venturers") may give notice in writing to the Defaulting Joint Venturer specifying the particulars of the default and requiring the Defaulting Joint Venturer to rectify or cure the default within fifteen (15) days from the receipt of such notice from the Non-Defaulting Joint Venturer(s).

12.2 Remedies on Default

If the Defaulting Joint Venturer fails to remedy or cure the default within the time provided in Section 12.1 if such default is capable of being remedied or cured within such period or if not capable of being remedied or cured within such time the Defaulting Joint Venturer does not within such period commence and diligently proceed to remedy or cure the default, then the Non-Defaulting Joint Venturer(s) may, in addition to and without prejudice to any other rights it may have at law or in equity:

(a) take such steps as it/they deems necessary or advisable to remedy or cure the default and any costs or expenses incurred by the Non-Defaulting Joint Venturer(s) in so doing shall be a charge upon the Project Interest of the Defaulting Joint Venturer and shall be paid upon demand by the Defaulting Joint Venturer or may be collected by any means available to the Non-Defaulting Joint Venturer(s) at law; or

(b) serve notice on the Defaulting Joint Venturer requiring the Defaulting Joint Venturer to transfer and convey the Project Interest of the Defaulting Joint Venturer to the Non-Defaulting Joint Venturer(s) at the purchase price equal to the Project Interest of the Defaulting Joint Venturer multiplied by the then current fair market value of the Project as determined by an independent appraisal commissioned by the Non-Defaulting Joint Venturer(s).

12.3 Terms of Sale.

The purchase of the Defaulting Joint Venturer's Project Interest shall be completed thirty (30) days following the notice provided for in subsection 12.2 (b) or if the alleged default is the subject matter of a Dispute under Section 11.3 then thirty (30) days following the arbitral decision provided for in subsection 11.3 at which time the Non-Defaulting Joint Venturer(s) shall pay the purchase price to the Defaulting Joint Venturer by certified cheque or bank draft.

12.4 Transfer of Project Interest.

The Defaulting Joint Venturer agrees to transfer its Project Interest to the Non-Defaulting Joint Venturer(s), upon completion of the sale under Section 12.3.

12.5 Purchase Obligation upon Termination of YMCA Lease.

At the end of the term of the YMCA Lease as the same may be extended from time to time, and provided the YMCA is not then in default of any of its obligations under the YMCA Lease or this Agreement, the City shall purchase the YMCA's Project Interest. The purchase price for the YMCA's Project Interest shall be determined by multiplying the YMCA's Project Interest by the fair market value of the Project as of the date of termination of the YMCA Lease. The fair market value of the Project shall be determined by an independent real estate appraiser commissioned by the Joint Venture who: i) has no financial interest in the Land; ii) is a member of the Appraisal Institute of Canada, or of any successor organization or body of comparable standing if same are not in existence; and iii) is qualified to appraise real estate in the Province of Ontario similar to the Lands and has been engaged in real estate appraisal activities for a period of not less than five (5) years immediately preceding his appointment provided for herein. Such determination shall be made within thirty (30) days of such termination date. The City shall pay to the YMCA the purchase price for the YMCA's Project Interest within thirty (30) days of such value determination, upon which payment the YMCA shall transfer to the City the YMCA's Project Interest.

12.6 Purchase Obligation upon Termination of the Library Lease.

At the end of the term of Library Lease as the same may be extended from time to time, and provided the Library is not then in default of any of its obligations under the Library Lease or this Agreement, the City shall purchase the Library's Project Interest. The purchase price for the Library's Project Interest shall be determined by multiplying the Library's Project Interest by the fair market value of the Project as of the date of termination of the Library Lease. The fair market value of the Project shall be determined by an independent real estate appraiser commissioned by the Joint Venture who: i) has no financial interest in the Land; ii) is a member of the Appraisal Institute of Canada, or of any successor organization or body of comparable standing if same are not in existence; and iii) is qualified to appraise real estate in the Province of Ontario similar to the Lands and has been engaged in real estate appraisal activities for a period of not less than five (5) years immediately preceding his appointment provided for herein. Such determination shall be made within thirty (30) days of such termination date. The City shall pay to the Library the purchase price for the Library's Project Interest within thirty (30) days of such value determination, upon which payment the Library shall transfer to the City the Library's Project Interest.

13. GENERAL

13.1 Further Assurances.

Each of the Joint Venturers will execute and deliver all such further documents and instruments and do all acts and things as may reasonably be required to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

13.2 Time of the Essence.

Time shall be of the essence of this Agreement.

13.3 Commissions.

The Joint Venturers shall each indemnify and save harmless the other from and against all claims whatsoever for any commission or other remuneration payable or alleged to be payable to any person, whether such persons purport to act or have acted for any of the Joint Venturers.

13.4 Legal Fees.

Each of the parties hereto shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred, unless any such costs and expenses are acknowledged by the Joint Venturers to be an expense of the Joint Venture.

13.5 Public Announcement.

No public announcement or press release concerning the Facility and this Agreement shall be made by the Joint Venturers without the consent and joint approval of the Joint Venturers. The Joint Venturers agree that immediately upon the execution of this Agreement, a mutually acceptable announcement shall be released for distribution.

13.6 Benefit of the Agreement.

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

13.7 Entire Agreement.

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the parties other than as expressly set forth in this Agreement.

13.8 Amendments and Waiver.

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

13.9 Notices.

Any demand, notice or other communication (hereinafter referred to as a "Communication") to be given in connection with this Agreement shall be given in writing and may be given by personal delivery, by registered mail or by transmittal by facsimile addressed to the recipient as follows:

To the YMCA:

YMCA of Western Ontario
382 Waterloo St.
London, ON N6B 2N8
Fax: 519-667-0229
Attention: Chief Executive Officer

To the City:

The Corporation of the City of London
Suite 1014, City Hall
300 Dufferin Avenue
P.O. Box 5035
London ON N6A 4L9
Fax: 519-661-4892
Attention: City Clerk

To the Library:

London Public Library
251 Dundas Street
London, ON N6A 6H9

Fax: 519-663-5396
Attention: CEO & Chief Librarian

or to such other address, or facsimile number or individual as may be designated by notice by any party to the others. Any Communication given by personal delivery shall be conclusively deemed to have been given on the date of actual delivery thereof and, if given by registered mail, on the third Business Day following the deposit thereof in the mail and, if given by facsimile, on the day of transmittal thereof, if transmitted on a Business Day and prior to 5:00 p.m., and otherwise on the next following Business Day. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery, by facsimile.

13.10 Governing Law.

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

13.11 Counterparts: Electronic Signatures

This Agreement may be executed by two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic or email exchange bearing the copies of a party's signature shall constitute a valid and binding execution and delivery of this Agreement by such party. Such electronic copies shall constitute enforceable original documents.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Name: Matt Brown
Title: Mayor

Per: _____
Name: Catharine Saunders
Title: City Clerk
I/We have authority to bind the Corporation

YMCA OF WESTERN ONTARIO

Per: _____

Name: Andrew Lockie

Title: Chief Executive Officer

Per: _____

Name:

Title: Director

I/We have authority to bind the Corporation

LONDON PUBLIC LIBRARY

Per: _____

Name: Scott Courtice

Title: Board Chair

Per: _____

Name: Stuart Clark

Title: Board Vice Chair

I/We have authority to bind the Corporation

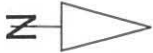
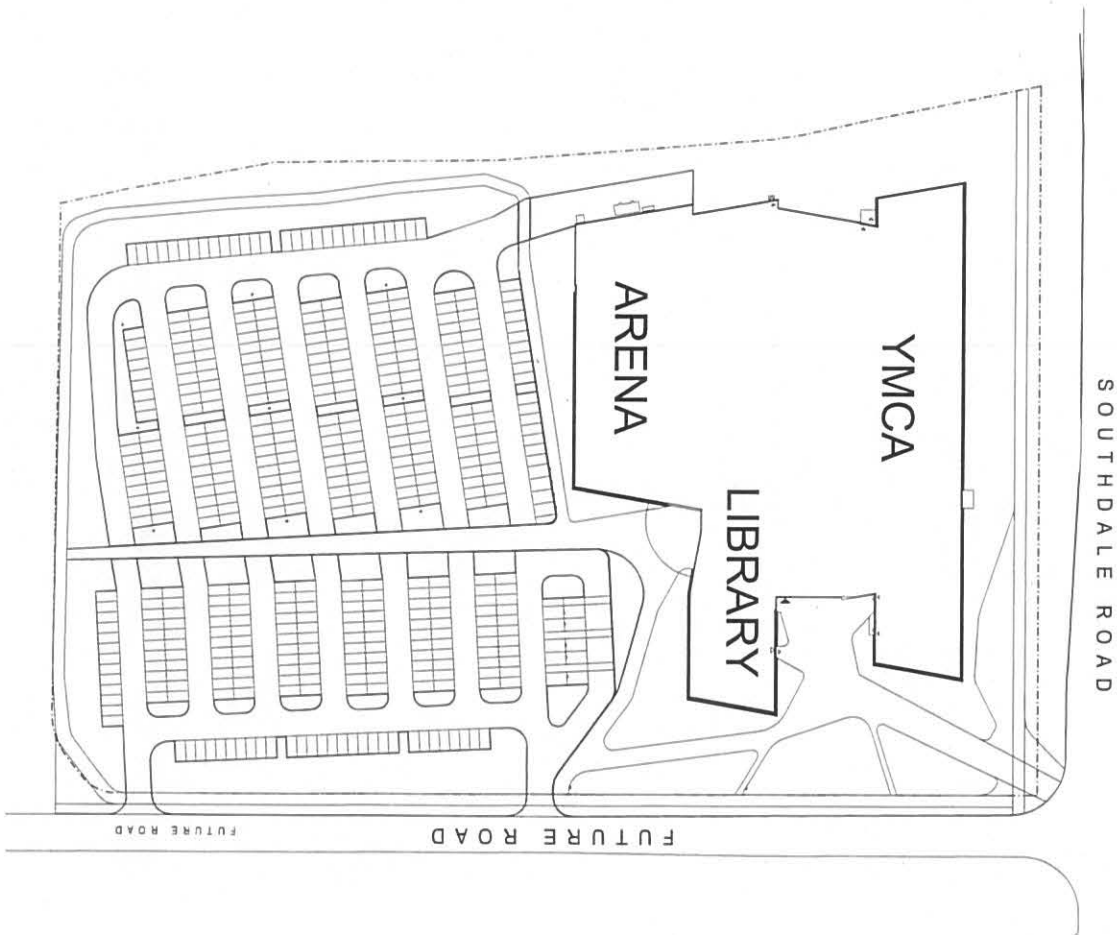
SCHEDULE "A"

DESCRIPTION OF THE LANDS

Part Lot 38, Concession 2 (geographic Township of Westminster), City of London, County of Middlesex designated as Parts 1 to 16 inclusive on Plan 33R-119067.

SCHEDULE "B"

SITE PLAN



SOUTH WEST COMMUNITY CENTRE
SITE PLAN

SCHEDULE "C"

YMCA LEASE

YMCA LEASE AGREEMENT

THIS LEASE made as of the ____ day of June, 2016.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON as administrator for the **SOUTHWEST COMMUNITY CENTRE JOINT VENTURE** a joint venture of The Corporation of the City of London, the YMCA of Western Ontario and the London Public Library Board (the "**Landlord**")

-and -

YMCA of WESTERN ONTARIO (the "**Tenant**")

Whereas:

A. Pursuant to a Joint Venture Agreement (the "**Joint Venture Agreement**") dated ____, 2016 made between The Corporation of the City of London and the YMCA of Western Ontario, and the London Public Library Board, the parties agreed to enter into a joint venture for the purpose of designing, constructing and operating a multi-use community facility (the "**Facility**") on the parcel of land located in the City of London as described in Schedule "A" attached (the "**Lands**");

B The Corporation of the City of London is the registered owner of the Lands and following completion of construction of the Facility will delivered the Lands and the Facility to the Southwest Community Centre Joint Venture, to operate the Facility;

C. The Tenant wishes to lease a portion of the Facility following completion of construction of the Facility.

Now therefore, in consideration of the mutual covenants and agreements between the parties, the parties agree as follows:

1. DEFINITIONS

In this Lease and the Schedules to this Lease:

- (a) "**Additional Rent**" means all amounts in addition to Basic Rent payable by the Tenant to the Landlord pursuant to this Lease;
- (b) "**Applicable Laws**" means all statutes, laws, by-laws regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction, and all amendments thereto, at any time and from time to time;

- (c) **"Arena"** means that part of the Facility operated by the City as an arena and Service London kiosk under the Arena and Service London Lease;
- (d) **"Arena and Service London Lease"** means the lease entered into between the Joint Venture and the City with respect to the Arena and Service London Premises;
- (e) **"Arena and Service London Premises"** means that part of the Facility operated by the City as and Arena pursuant to the terms of the Arena and Service London Lease;
- (f) **"Basic Rent"** means the rent payable under Section 4.1;
- (g) **"Business Tax"** means the taxes under Section 7.1;
- (h) **"Capital Expenditures"** means major repairs to or replacement of the Common Areas which, in accordance with Canadian accounting standards for not-for-profit organizations and as identified in the Lifecycle Study, are characterized as capital in nature and which would include the structural elements of the Facility, the mechanical, electrical and plumbing fixtures and equipment serving the totality of the Facility (for greater certainty, excluding building systems serving the Arena and Service London Premises only), the paved surfaces of the Common Areas (not including striping) but specifically excluding each of the following:
 - (i) repairs or replacements of furnishings, furniture or equipment of any tenant;
 - (ii) repairs or replacements of wall coverings, window coverings, or ceiling treatments;
 - (iii) repairs to or replacement of windows or plate glass other than replacement of windows or plate glass due to obsolescence;
 - (iv) landscaping;
 - (v) any betterments made to the Facility not previously approved by the Management Committee of the Landlord; and
 - (vi) any repair or replacement having a cost of less than \$5,000;
- (i) **"City"** means The Corporation of the City of London;
- (j) **"Commencement Date"** means the date on which the Term commences under Section 2.1;

- (k) "**Common Areas**" mean those areas, facilities, utilities, improvements, equipment and installations in the Facility which from time to time are not designated or intended by the Landlord to be leased to tenants of the Facility, and those areas, facilities, utilities, improvements, equipment and installations which serve or are for the benefit of the Facility whether or not located in, adjacent to or near the Facility, including, without limiting the generality of the foregoing, all parking areas, access roads, truck courts, driveways, truckways, delivery passages, the roof, exterior weather walls, exterior and interior structural elements and bearing walls in the Facility and improvements comprising the Facility, loading and related areas, pedestrian sidewalks, landscaped and planted areas, all public seating and service areas, stairways, escalators, ramps, moving sidewalks and elevators and other transportation equipment and systems, tenant common and public washrooms, electrical, telephone, meter, valve, and janitor rooms, music, fire prevention, security and communications systems, general signs, skylights, columns, pipes, electrical, plumbing, drainage, mechanical heating, ventilating and air conditioning and all other installations, equipment or services located therein or related thereto as well as the structures housing the same, and including the active forecourt on the Lands (for greater certainty, excluding any pipes, electrical, plumbing, drainage, mechanical, heating, ventilating and air conditioning system exclusive to the Arena and Service London Premises);
- (l) "**Facility**" means the multi-use community centre constructed or to be constructed on the Lands;
- (m) "**Leasehold Mortgage**" means any and all mortgages, charges, debentures, security agreements, trust deeds, hypothecs or like instruments, now or hereafter created, resulting from financing, refinancing or collateral financing (including renewals or extensions thereof) made or arranged by the Tenant or its interest in all or any part of the Premises;
- (n) "**Leasehold Mortgagee**" means the mortgagee as set out in 16.1(a)(ii);
- (o) "**Library**" means the London Public Library;
- (p) "**Library Lease**" means the lease entered into between the Joint Venture and the Library with respect to the Library Premises;
- (q) "**Library Premises**" means that part of the Facility leased to the Library under the Library Lease;
- (r) "**Library Proportionate Share**" means a fraction, the numerator of which is the Rentable Area of the Library Premises and the denominator of which is the Rentable Area of the Facility;

- (s) **"Operating Costs"** means the total cost and expense incurred in owning, operating and maintaining the Facility and the Common Areas excluding only the original acquisition and construction costs but specifically including without limiting the generality of the foregoing, gardening and landscaping charges, the total annual cost and expense of insuring, including but not limited to the Lands, buildings, improvements, equipment and other property in the Facility and Common Areas and from time to time owned or operated by the Landlord or for which the Landlord is legally liable in such manner and form with such companies and such coverage and in such amounts as the Landlord from time to time determines; cleaning, snow removal, landscaping, garbage and waste collection and disposal; lighting, electricity, public utilities, loud speakers, public address and musical broadcasting systems; policing, security, the costs incurred in repairing energy conservation equipment and systems and life safety systems for the Facility and for effecting any improvement to be made to comply with air pollution or environmental control standards; heating, ventilating and air conditioning of the Common Areas; all repairs and replacements to and maintenance and operation of the Facility and the Common Areas and the systems, facilities and equipment owned by the Landlord (including without limitation all escalators, elevators, moving sidewalks and other transportation equipment and systems, and the heating, ventilating and air conditioning systems serving the Common Areas) and the costs incurred for repairing or replacing all other fixtures, equipment and facilities owned by the Landlord or comprising the Facility and the Common Areas (including the heating, ventilating and air conditioning systems serving the Common Areas) which by their nature require periodic repair or replacement, provided, however, notwithstanding the generality of the foregoing, Operating Costs shall not include Capital Expenditures. For greater certainty, Operating Costs excludes any expenses related to the Library Premises and the Arena and Service London Premises. The foregoing is for purposes of definition only and shall not impose any obligation upon the Landlord to incur such expenses or provide such service, except as otherwise provided in this Lease (for greater certainty, excluding all elements related to the Arena and Service London Premises);
- (t) **"Person"** means any person, firm, partnership or corporation, or any group or combination of persons, firms, partnerships or corporations;
- (u) **"Premises"** means that portion of the Facility leased to the Tenant pursuant to the terms of this Lease which includes the entire Facility less the Arena and Service London Premises and the Library Premises and the Common Areas as described in Schedule "B";
- (v) **"Project"** means the Facility and the Lands;

- (w) "**Project Interest**" means the Tenant's interest in the Joint Venture as described in the Joint Venture Agreement;
- (x) "**Program Services and Access Agreement**" means that agreement made between the Tenant and the City providing for the operation of certain City programs at the Facility;
- (y) "**Realty Taxes**" means the taxes under Section 7.2;
- (z) "**Rentable Area of the Arena and Service London Premises**" means the area expressed in square feet of all floors of the Arena and Service London Premises measured from:
 - i. the exterior face of all exterior walls, doors and windows;
 - ii. the exterior face of all interior walls, doors and windows separating the Arena and Service London Premises from Common Areas, if any; and
 - iii. the centre line of all interior walls separating the Arena and Service London Premises from adjoining leased premises in the Facility;
- (aa) "**Rentable Area of the Library Premises**" means the area expressed in square feet of all floors of the Library Premises measured from:
 - i. the exterior face of all exterior walls, doors and windows;
 - ii. the exterior face of all interior walls, doors and windows separating the Library Premises from Common Areas, if any; and
 - iii. the centre line of all interior walls separating the Library Premises from adjoining leased premises in the Facility;
- (bb) "**Rentable Area of the Facility**" means the area in square feet of the Premises, the Arena and Service London Premises and the Library Premises, excluding areas designated as Common Areas by the Landlord;
- (cc) "**Rents**" means the aggregate of Basic Rent and Additional Rent;
- (dd) "**Replacement Reserve Fund**" means the fund established pursuant to Section 9.2;
- (ee) "**Sales Tax**" means those taxes as set out in Section 6.1;
- (ff) "**Substantial Completion of the Facility**" means the date upon which the Facility is substantially completed as defined in the *Construction Lien Act* and the Premises are available for occupancy by the Tenant;
- (gg) "**Term**" means the period set out in Section 2.1;

- (hh) **"Transfer"** means an assignment of this Lease in whole or in part, a sublease of all or any part of the Premises, any transaction whereby the rights of the Tenant under this Lease or to the Premises are transferred to another Person, any transaction by which any right of use or occupancy of all or any part of the Premises is conferred on any Person and includes any transaction or occurrence whatsoever (including, but not limited to, expropriation, receivership proceedings, seizure by legal process and transfer by operation of law), which has changed or might change the identity of the Person having lawful use or occupancy of any part of the Premises.

2. TERM

2.1 Term

Subject to Section 18.10, this Lease is granted for a term of forty (40) years commencing on Substantial Completion of the Facility (the "**Term**").

2.2 Termination

Notwithstanding paragraph 2.1 herein, this Lease may be terminated at any time by the mutual consent of both parties, which consent shall be evidenced in writing. Notwithstanding the foregoing, if this Lease is subject to a Leasehold Mortgage, no such termination shall be valid unless consented to in writing by the Leasehold Mortgagee.

At the end of the Term of this Lease as the same may be extended from time to time, and provided the Tenant is not then in default of any of its obligations under this Lease, the City shall purchase the Tenant's Project Interest pursuant to the terms of section 12.5 of the Joint Venture Agreement.

3. DEMISE AND USE

3.1 Demise

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

3.2 Use

The Tenant shall use the Premises for the purpose of operation of a typical YMCA facility and shall not use the Premises for any other purpose without the express written consent of the Landlord, which consent shall not be unreasonably withheld. For the

purposes hereof, a typical YMCA facility means provides activities that provide opportunities for personal growth in spirit, mind and body. Typically, these activities include physical activity, fitness, recreation, sports, rehabilitation, therapy, community building, fundraising and educational programs for families and individuals of all ages and levels of ability.

3.3 Use of Common Areas

The use and operation by the Tenant of the Premises shall entitle the Tenant to the use in common with the Library and the City, under the terms of the Arena and Service London Lease; the Library Lease; and the Program Services and Access Agreement, of the Common Areas, subject however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.

3.4 Nuisance

The Tenant shall not do or suffer any act or thing which constitutes a nuisance or which is offensive or an annoyance to the Landlord, other occupants of the Lands or the public generally.

3.5 Compliance with Laws

(a) The Tenant shall comply with all Applicable Laws, including obtaining all necessary permits, licences and/or approvals, during the Term pertaining to or affecting the Premises and any and all governmental or municipal regulations relating to the continued use, condition and occupation of the Premises.

(b) Upon request, the Tenant shall provide to the Landlord, acting reasonably, satisfactory evidence of compliance by the Tenant with all Applicable Laws as contemplated in Subsection (a) above.

3.6 Signs

The Tenant may, subject to Applicable Laws, erect, install or display any sign, symbol, notice or lettering of any kind anywhere on the Premises with the prior written consent of the Landlord as to design, size, location and method of installation, which consent shall not be withheld to the extent that such signs are similar to those at the Stoney Creek Community Centre. Such signs shall be installed, maintained and operated at the sole expense of the Tenant.

4. RENT

4.1 Basic Rent

The Tenant shall pay to the Landlord in consideration of this Lease an annual rent of one (\$1.00) dollar in lawful money of Canada and without deduction, abatement or set-off (the "**Basic Rent**"). The first payment of Basic Rent shall be made as of the Commencement Date and each subsequent payment shall be payable on that date annually thereafter.

4.2 Operating Costs and Capital Expenditures

The Tenant shall be responsible for the payment all Operating Costs and Capital Expenditures, as Additional Rent. The Landlord shall have the same rights and remedies in the event of default by the Tenant in the payment of Operating Costs or Capital Expenditures as the Landlord has in the event of default by the Tenant in the payment of Basic Rent.

4.3 Reimbursement from Library and City

Under the terms of the Library Lease, the Library shall reimburse the Tenant for its' share of all Operating Costs incurred by the Tenant to repair and maintain the Common Areas in accordance with Schedule "C" attached hereto, to be paid for thirty (30) days net following billing. The Library shall be responsible for repairing and maintaining the Library Premises at the expense of the Library. Each year during the term of the Library Lease the Library shall also pay to the Tenant for deposit into the Replacement Reserve Fund the Library's Proportionate Share of the required annual contribution to the Replacement Reserve Fund determined from the Lifecycle Study in accordance with Section 9.2 hereof, or such other amount as is agreed by the Tenant, the City and the Library at any time and from time to time with respect to certain elements of Capital Expenditures.

Under the terms of the Arena and Service London Lease, the City shall reimburse the Tenant for its' share of all Operating Costs incurred by the Tenant to repair and maintain the Common Areas in accordance with Schedule "D" attached hereto, to be paid for thirty (30) days net following billing. The City shall be responsible for repairing and maintaining the Arena and Service London Premises at the expense of the City. The City shall also reimburse the Tenant for its' share of all Capital Expenditures in accordance with Schedule "E" attached hereto, to be paid for thirty (30) days net following billing.

4.4 Payment of Rent

The Tenant shall pay all Rent at the times and in the manner herein described to or to the order of the Landlord, without demand therefor, at the Landlord's address as set forth in Section 18.7 hereof or at such other place in Canada as the Landlord may from time to time request in writing to the Tenant.

5. NET LEASE

The Tenant acknowledges and agrees that, except as specifically provided herein, the Landlord shall not be responsible during the Term of the Lease for any costs, charges, expenses and outlays of any nature arising from or relating to the Premises, or the contents thereof, excepting only specific Landlord covenants contained herein and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind, except as otherwise specifically provided, relating to the Premises and the Tenant covenants with the Landlord accordingly.

6. HARMONIZED SALES TAX

Notwithstanding any other paragraph or provision of this Lease, the Tenant shall pay to the Landlord an amount equal to any and all applicable harmonized sales taxes, sales taxes, value added taxes and any other taxes of a like nature imposed on the Landlord with respect to any of the Rent payable by the Tenant to the Landlord under the Lease, whether characterized as a harmonized sales tax, sales tax, value added tax or otherwise (hereinafter called the "**Sales Tax**"), it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes payable by the Landlord. The amount of the Sales Taxes so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such Sales Taxes apply, are payable to the Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines.

Notwithstanding any other paragraph or provision in this Lease, the amount payable by the Tenant under this Section 6.1 shall be deemed not to be Rent, but the Landlord shall have all of the same remedies for and rights of recovery of such amounts as it has for recovery of Rent under this Lease.

7. ADDITIONAL RENT

7.1 Business and School Tax

The Tenant shall pay business and other government taxes, charges, rates, duties and assessments levied in respect of the Tenant's occupancy of the Premises or in respect of the personal property or business of the Tenant on the Premises and the Tenant's use of the Premises (the "**Business Tax**") as and when the same become due, to the extent that same are legally payable by the Tenant. If no separate tax bills for Business Tax are issued with respect to the Tenant or the Premises, the Landlord may allocate Business Tax to the Premises in such reasonable manner as may be agreed upon by the Tenant and the Landlord and the Tenant shall pay allocation to the Landlord not less than fifteen (15) days prior to the date on which payment to the proper taxing authority is due.

7.2 Real Property Taxes

The Tenant shall pay to the proper taxing authority all real property taxes, rates, duties and assessments, including local improvement rates, charges or levies, whether

general or special, that are levied, rated, assessed or charged against the Premises (the "**Realty Tax**") as and when due, to the extent that same are legally payable by the Tenant. If no separate Realty Tax bill is issued for the Premises, the Landlord may allocate Realty Tax to the Premises in such reasonable manner as may be agreed upon by the Tenant and the Landlord and the Tenant shall pay such allocation to the Landlord not less than fifteen (15) days prior to the date on which payment to the proper taxing authority is due.

7.3 Right to Contest

The Tenant shall have the right and privilege, if acting in good faith, of contesting or appealing any assessment or of applying for a reduction of the amount of any tax, rate, levy, duty or assessment and may postpone payment thereof to the extent permitted by law, if the Tenant is diligently proceeding with an appeal, provided that:

- (a) such postponement does not render the Premises or any part thereof, subject to sale or other forfeiture and does not render the Landlord liable to prosecution, penalty, fine or other liability;
- (b) the Tenant provides such security in respect of the amount postponed as the Landlord may require; and
- (c) upon final determination of such appeal, the Tenant promptly pays the amount determined to be payable.

7.4 Evidence of Payment

Upon request by the Landlord, the Tenant shall deliver promptly to the Landlord receipts for payment of all amounts payable by the Tenant pursuant to this Section and any other provision of this Lease which were due and payable up to one (1) month prior to such request.

7.5 Recovery of Additional Rent

Additional Rent shall be recoverable by the Landlord from the Tenant in the same manner as Basic Rent reserved and in arrears under the terms hereof.

7.6 Acknowledgment of Tenant's Tax Exempt Status

The City acknowledges that the Tenant is currently exempt from Business Tax and Realty Tax, with the effect that so long as the Tenant continues to be exempt, sections 7.1 and 7.2 are inapplicable. If the Tenant subleases any part of the Premises to a third party who is not exempt from Business Tax and Realty Tax sections 7.1 and 7.2 shall be applicable in respect of such subtenant.

8. TENANT'S AND LANDLORD'S OBLIGATIONS

8.1 Tenant's Obligations

During the Term of this Lease the Tenant shall:

- (a) perform all the covenants of the Tenant contained herein;
- (b) be responsible for the installation and continued provision of utilities and services to the Premises for the purposes of operating the Premises and shall be responsible for all costs associated with the consumption of utilities in regard to the Premises;
- (c) maintain and keep the Premises and the Common Areas, and the appurtenances and equipment therein and thereon to the Repair Standard as provided in Section 9.1 hereof;
- (d) ensure that all work for which the Tenant is responsible hereunder is done in a good and workmanlike manner by good and reputable firms and shall ensure all such work is conducted in a manner that does not unreasonably affect the Arena and Service London Premises and/or the Library Premises and shall ensure that all such work conducted on the Lands is done such that no liens are registered against the Lands in respect of work so performed

8.2 Landlord's Obligations

The Landlord hereby covenants with the Tenant that provided the Tenant pays the Rent hereby reserved and performs the covenants on its part to be performed in this Lease, the Tenant shall peacefully possess and enjoy the Premises for the Term, without any interruption or disturbance from the Landlord or any other Person or Persons lawful claiming by, from or under the Landlord except as provided in this Lease.

9. MAINTENANCE AND REPAIR

9.1 Maintenance and Repair by the Tenant

The Tenant covenants to repair the Facility, excluding the Library Premises and the Arena and Service London Premises, in a commercially reasonable state of repair and in good operating condition consistent with the South London Community Centre, the Stoney Creek Community Centre and the downtown facility of the Tenant, provided, however, in the event that any of these facilities are closed the Landlord and the Tenant, acting reasonably, will determine a replacement facility (the "**Repair Standard**"). Without limiting the generality of the foregoing, the Tenant agrees that it will at all times keep the Premises and the Common Areas (including exterior entrances and all glass and windows, all partitions, doors, fixtures, equipment, mechanical, heating and air-conditioning systems) in good order, condition and repair (including

periodic painting or redecorating and preventative maintenance as determined by the Landlord) and including such repairs and replacements as are required to keep the Premises and the Common Areas in good repair and condition to the Repair Standard. All aforesaid repairs, restorations and replacements shall in quality and class equal to the original work or installations.

The Tenant agrees to provide to the Landlord annually within sixty (60) days of the end of each lease year during the Term a maintenance budget for the Facility.

If the Tenant refuses or neglects to repair properly to the Repair Standard and to the reasonable satisfaction of the Landlord as soon as reasonably possible after written demand, the Landlord may make such repairs without liability to the Tenant for any loss or damage that may accrue to the Tenant by reason thereof, and upon completion the Tenant shall pay the Landlord's costs for making such repairs upon presentation of a bill therefor, as Additional Rent. Said bill shall include interest at the prime commercial lending rate of the Landlord's bank from time to time plus five percent (5%) on said cost from date of completion of the repairs by the Landlord to the date of payment by the Tenant.

The Landlord shall if required in connection with the granting of easements in favour of the local municipality, the local public utilities commission or similar authority, Bell Canada, a cable T.V. operator, the local hydro-electric commission, the entity providing gas or any other Person providing a service or utility for the benefit of the Premises, not unreasonably withhold its consent thereto, and will execute all instruments and make all such attendances as shall be required in connection therewith.

9.2 Replacement Reserve Fund

Prior to the end of the first year of the Term, the Landlord shall conduct a lifecycle study (the "**Lifecycle Study**") to determine the appropriate contributions of the Tenant and the Library to a replacement reserve to fund Capital Expenditures, which shall account for and exclude the City's contribution obligation to also fund Capital Expenditures.

The Tenant shall establish a replacement reserve fund (the "**Replacement Reserve Fund**") as a segregated fund which may be maintained through the Tenant's foundation provided that the Replacement Reserve Fund including accrued interest is segregated and restricted to the Facility.

The rate of contribution required to the Replacement Reserve Fund each year during the Term will be determined from the results of the Lifecycle Study but in any event, inclusive of the City's contribution obligation to Capital Expenditures, shall not be more than one (1%) percent of the total capital cost of the Facility, excluding the Land, and consulting costs, engineering fees and all other soft costs. There shall be no contribution to the Replacement Reserve Fund with respect to the first year of operation. Replacement Reserve Fund contributions shall commence in relation to the second year of operation, with that contribution being payable within ninety (90) days of

the completion of the second year of operation. If, in any year, there are insufficient operating surpluses of the Tenant from the operation of the Premises to contribute the full amount required to the Replacement Reserve Fund for that year, then the shortfall shall accumulate and shall be contributed from future operating surpluses. The Replacement Reserve Fund shall be invested in accordance with the investment guidelines established by the YMCA of Western Ontario from time to time, a copy of which will be provided to the Management Committee of the Landlord. No material change in such investment guidelines as the same relate to the Replacement Reserve Fund shall be made without obtaining the prior consent of the Management Committee of the Landlord from time to time.

Except as provided below, the Replacement Reserve Fund shall only be used, upon recommendation of the Tenant and with the approval of the Management Committee of the Landlord, for the purpose of Capital Expenditures at the Facility. Ordinary maintenance of plant and equipment is not to be funded from the Replacement Reserve Fund.

10. INSURANCE

10.1 Tenant's Insurance

The Tenant shall effect and maintain during the Term:

- (a) contents insurance for all contents and personal property on or about the Premises;
- (b) comprehensive general liability insurance against claims for bodily injury (including death), personal injury and property damage on or about the Premises in amounts satisfactory from time to time to the Landlord acting reasonably but in any event in an amount not less than \$5,000,000.00 per occurrence, or such other reasonable amount as the Landlord, acting reasonably, may require upon not less than one (1) months written notice;
- (c) subject to general availability on reasonable commercial terms, any other form of insurance that the Landlord acting as a prudent owner may require from time to time in form, amounts and for insurance risks acceptable to the Landlord.

10.2 Landlord's Insurance

The Landlord shall effect and maintain during the Term: (i) comprehensive general liability insurance against claims for bodily injury (including death), personal injury and property damage on or about the Arena and Service London Premises and the Common Areas, together with the Lands in amounts satisfactory from time to time to the Tenant acting reasonably but in any event in an amount not less than \$5,000,000.00 per occurrence, or such other reasonable

amount as the Tenant, acting reasonably, may require upon not less than one (1) months written notice; (ii) contents insurance for all contents and personal property on or about the Arena and Service London Premises; (iii) "all risks" insurance which shall insure the Facility as would be insured by a prudent owner for an amount not less than the replacement cost thereof from time to time, against loss or damage by perils now or hereafter from time to time embraced by or defined in a standard all risks insurance policy including fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism or malicious acts, smoke, leakage from fire protective equipment, windstorm or hail, or collapse; and (iv) broad form boiler and machinery insurance, if applicable, with limits for each accident in an amount not less than the full replacement cost of the improvements. In addition, the Landlord cause the Library to effect and maintain during the Term (i) comprehensive general liability insurance against claims for bodily injury (including death), personal injury and property damage on or about the Library Premises, in amounts satisfactory from time to time to the Tenant acting reasonably but in any event in an amount not less than \$5,000,000.00 per occurrence, or such other reasonable amount as the Tenant, acting reasonably, may require upon not less than one (1) months written notice; and (ii) contents insurance for all contents and personal property on or about the Library Premises. The Tenant shall contribute to the Landlord its proportionate share, based on area, of the cost of the property insurance in (iii) and (iv) above.

10.3 Form of Policies

- (a) Each policy required pursuant to Section 10.1 or 10.2 shall be in form and with insurers reasonably acceptable to the receiving party. The insurance described in Sections 10.1 (a), (b) and (c) shall name as an additional insured the Landlord and anyone else with an interest in the Premises from time to time designated in writing by the Landlord; the insurance described in Section 10.2 shall name as an additional insured the Tenant. All property damage and liability insurance shall contain provisions for cross liability and severability of interests as between the Landlord and the Tenant. Each policy maintained pursuant to Sections 10.1 (a), (b), (c) and (d) shall contain a waiver of any rights of subrogation which the insurer may have against the Landlord and those for whom the Landlord is in law responsible whether the damage is caused by the act, omission or negligence of the Landlord or such other Persons. Each policy maintained pursuant to Section 10.2 shall contain a waiver of any rights of subrogation which the insurer may have against the Tenant and those for whom the Tenant is in law responsible whether the damage is caused by the act, omission or negligence of the Tenant or such other Persons.
- (b) Each policy required pursuant to Section 10.1 shall provide that the insurer must notify the Landlord in writing at least thirty (30) days prior to any material change or cancellation thereof and that the policy shall not be invalidated in respect of the interests of the Landlord by reason of any

breach or violation of any warranties, representations, declarations or conditions contained in such policies, and the policy will be considered as primary insurance and shall not call into contribution any other insurance that may be available to the Landlord. Each policy required pursuant to Section 10.2 shall provide that the insurer must notify the Tenant in writing at least thirty (30) days prior to any material change or cancellation thereof and that the policy shall not be invalidated in respect of the interests of the Tenant by reason of any breach or violation of any warranties, representations, declarations or conditions contained in such policies, and the policy will be considered as primary insurance and shall not call into contribution any other insurance that may be available to the Tenant.

- (c) The Tenant shall furnish to the Landlord, prior to the commencement of the Term, copies of all policies required pursuant to Sections 10.1 or certificates of such policies in a form satisfactory to the Landlord, acting reasonably, establishing the existence of all policies required pursuant to Sections 10.1 and shall provide written evidence of the continuation of such policies not less than ten (10) days prior to their respective expiry dates. The cost or premium for each and every such policy shall be paid by the Tenant. If the Tenant fails to maintain such insurance the Landlord shall have the right, but not the obligation to do so, to pay the cost or premium therefor, and in such event the Tenant shall repay to the Landlord, as Additional Rent, forthwith on demand the amount so paid. The Landlord shall furnish to the Tenant, prior to the commencement of the Term, copies of all policies required pursuant to Sections 10.2 or certificates of such policies in a form satisfactory to the Tenant, acting reasonably, establishing the existence of all policies required pursuant to Sections 10.2 and shall provide written evidence of the continuation of such policies not less than ten (10) days prior to their respective expiry dates. The cost or premium for each and every such policy shall be paid by the Landlord or the Library, as applicable. If the Landlord fails to maintain or cause to be maintained such insurance the Tenant shall have the right, but not the obligation to do so, to pay the cost or premium therefor, and in such event the Landlord shall repay to the Tenant forthwith on demand the amount so paid.

11. INDEMNITIES

11.1 Indemnity from Tenant

The Tenant shall indemnify and save harmless and defend the Landlord, its agents, officers, employees or other Persons for whom the Landlord is legally responsible against any and all claims, actions, damages, losses, liabilities and expenses, including all legal fees and disbursements (including, without limitation, those in connection with personal injury, loss or damage to property or bodily injury, including death) arising from or out of the use of or activities on the Premises, or the occupancy or use by the Tenant

or other permitted occupants of the Premises or occasioned wholly or in part by any act or omission of the Tenant, its officers, employees, agents, contractors, invitees, licensees or by any Person permitted by the Tenant to be on the Premises, or due to or arising out of any breach by the Tenant of this Lease, except to the extent contributed to by the City, its councilors, employees, agents, contractors, invitees, licensees or by any Person permitted by the City to be at the Facility. Notwithstanding the foregoing, this section 11 shall not apply to the use of the Library Premises or the Arena and Service London Premises.

11.2 Indemnity from Landlord

The Landlord shall indemnify and save harmless and defend the Tenant, its agents, officers, employees or other Persons for whom the Tenant is legally responsible against any and all claims, actions, damages, losses, liabilities and expenses, including all legal fees and disbursements (including, without limitation, those in connection with personal injury, loss or damage to property or bodily injury, including death) arising from or out of the use of or activities on the Library Premises, the Arena and Service London Premises, or the Lands or the occupancy or use by the Library, the City, the Landlord or other permitted occupants of the Library Premises, the Arena and Service London Premises, or the Lands or occasioned wholly or in part by any act or omission of the Landlord, the Library, the City or their respective officers, employees, agents, contractors, invitees, licensees or by any Person permitted by the Landlord, the Library or the City to be at the Library Premises, the Arena and Service London Premises, or the Lands, or due to or arising out of any breach by the Landlord of this Lease, except to the extent contributed to by the Tenant, its directors, employees, agents, contractors, invitees, licensees or by any Person permitted by the Tenant to be at the Facility.

12. DEFAULT AND REMEDIES

12.1 Events of Default

Any of the following constitutes an event of default ("**Event of Default**") under this Lease:

- (a) any Rent is in arrears and is not paid within fifteen (15) days after written demand by the Landlord;
- (b) the Tenant has breached any of its other obligations under this Lease and, if such breach is capable of being remedied and is not otherwise listed in this section 12.1 and after notice in writing to the Tenant:
 - (i) the Tenant fails to remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease); or
 - (ii) If such breach cannot reasonably be remedied within thirty (30) days or such shorter period, the Tenant fails to commence to

remedy such breach within such thirty (30) days or shorter period, or having commenced to remedy such breach, thereafter fails to proceed diligently with and does not complete the curing of such breach;

- (c) there is a Fundamental Breach as defined in the Program Services and Access Agreement, which is not remedied within the time required by that agreement;
- (d) the Tenant fails to make the required contribution to the Replacement Reserve Fund for five (5) continuous years or five (5) years in any ten (10) year period;
- (e) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, on assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any Person for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (f) a trustee, receiver, receiver/manager, or a Person acting in a similar capacity is appointed with respect to the business or assets of the Tenant unless such appointment is made by or on behalf of a Leasehold Mortgagee;
- (g) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a Transfer approved by the Landlord;
- (h) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within thirty (30) days after the date of such taking; or
- (i) any insurance policy covering any part of the Premises is, or is threatened to be (unless Tenant remedies the condition giving rise to threatened cancellation within forty-eight (48) hours after notice thereof and before cancellation), cancelled or is changed to substantially increase the premium (with the Tenant being unwilling or unable to pay such increase on demand) or to reduce coverage as a result of any action or omission by the Tenant or any Person for whom it is legally responsible.

12.2 Default and Remedies

Subject to the rights of the City under the Program Services and Access Agreement, if and whenever an Event of Default occurs under Section 12.1, then without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Premises and repossess the Premises and, in either case, enjoy them as of its former estate, and any improvements to the Facility shall thereupon be forfeited to and become the absolute property of the Landlord without compensation therefor to the Tenant and the Landlord may remove all Persons and property of the Tenant from the Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;
- (b) to enter the Premises as agent of the Tenant and to find another Person to operate the Premises and to enter into a new lease for the Premises for whatever length, and on such terms as the Landlord in its discretion may determine and to receive the rent therefor and as agent of the Tenant to take possession of any property of the Tenant on the Premises, to store such property at the expense and risk of the Tenant or to sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant; to make alterations to the Premises; and to apply the proceeds of any such re-letting first, to the payment of any expenses incurred by the Landlord with respect to any such new head lease, second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it becomes due and payable; provided that the Tenant shall remain liable for any deficiency to the Landlord;
- (c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter upon the Premises for such purposes. No notice of the Landlord's intention to remedy or attempt to remedy such default need be given the Tenant unless expressly required by this Lease. The Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such default and the Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith; and
- (d) to recover from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Premises.

12.3 Costs