

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

### **13. DAMAGE OR DESTRUCTION**

#### **13.1 Damage to Facility**

- (a) If the Facility is at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty required to be insured against by the Tenant pursuant to Section 10.1 or otherwise insured against by the Landlord, and if as a result of such occurrence:
- (i) the Facility is rendered untenantable only in part, in the opinion of the Landlord's architect delivered to the parties within sixty (60) days after any damage or destruction, this Lease shall continue in full force and effect and the Tenant shall, subject to Sections 13.1 (b) and 13.1 (c) hereof, commence diligently and with reasonable speed thereafter, to reconstruct, rebuild or repair the Facility. Rent shall abate proportionately to the portion of the Facility rendered untenantable from the date of the destruction or damage until the earlier of: (i) ninety (90) days after the Facility has been restored and rendered tenantable, and (ii) the date the Facility is reopened for business; and
  - (ii) the Facility is rendered wholly untenantable in the opinion of the Landlord's Architect delivered to the parties within sixty (60) days after any damage or destruction, this Lease shall continue in full force and effect and the Tenant shall, subject to Sections 13.1(b) and 13.1(c) hereof, commence diligently and with reasonable speed thereafter, to reconstruct, rebuild or repair the Facility. Rent and contributions to the Replacement Reserve Fund shall abate from the date of the destruction or damage until the earlier of: (i) ninety (90) days after the Facility has been restored and rendered tenantable, and (ii) the date the Facility is reopened for business.
- (b) Notwithstanding anything contained in Section 13.1(a), if the Facility is damaged or destroyed by any cause whatsoever and if, in the opinion of the Landlord's architect delivered to the parties within sixty (60) days after any damage or destruction, the Facility cannot be rebuilt or made fit for the purposes of the Tenant within one hundred and eighty (180) days of the happening of the damage or destruction, the Landlord or the Tenant may, at its option, elect to terminate this Lease by giving to the other, within thirty (30) days after receipt of

the architect's opinion, notice of termination and thereupon Rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid up to the date of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Premises to the Landlord in accordance with the terms of this Lease. In the event of termination hereunder that portion of the Replacement Reserve Fund including interest earned thereon that has been contributed by the Tenant shall become the property of the Tenant without further obligation hereunder and those portions of the Replacement Reserve Fund including interest earned thereon that has been contributed by the City and the Library shall be paid and transferred to the City and the Library respectively.

- (c) In each of the foregoing cases, the Landlord agrees that proceeds of insurance shall be made available to the Tenant for the purposes of discharging its obligations hereunder. Any proceeds in excess of the costs actually incurred shall be retained by the Tenant for its own use.

#### **14. TRANSFER AND SUBLETTING**

##### **14.1 Consent Required**

The Tenant shall not enter into, consent to, or permit any Transfer without prior written consent of the Landlord. Notwithstanding the foregoing, the Tenant shall not require the consent of the Landlord to sublease up to a maximum of 500 square feet of the Premises to ancillary service providers or for office purposes, subject to the other provisions of this Lease.

##### **14.2 Assignment by Landlord**

The Landlord shall have the unrestricted right to sell, transfer, lease, charge or otherwise dispose of all or any part of its interest in the Lands or any interest of the Landlord in this Lease. In the event of any sale, transfer, lease, charge or other disposition (an "Assignment"), to the extent that the assignee from the Landlord agrees with the Landlord to assume the obligations of the Landlord under this Lease, the Landlord shall thereupon and without further agreement be released of all liability under this Lease except to the extent such liability relates to the period prior to the Assignment.

#### **15. LEASEHOLD MORTGAGE**

##### **15.1 Right to Mortgage**

The Tenant may make or arrange a Leasehold Mortgage, provided that the following conditions shall have been or will be complied with:

- (a) The Leasehold Mortgage shall contain the following provisions:

- (i) that such Leasehold Mortgage covers and includes all of the Tenant's right, title and interest to the Premises;
- (ii) that such Leasehold Mortgage shall be held by or for the benefit of a chartered bank, trust company, insurance company, pension fund, other institutional lender, the City or any other Person consented to by the Landlord (which consent shall not be unreasonably withheld) and that such holder or beneficiary (the "**Leasehold Mortgagee**") shall acquire the ownership of this Lease on foreclosure of its Leasehold Mortgage or by assignment of this Lease in lieu of foreclosure of its Leasehold Mortgage, only if it shall have, by written agreement approved by the Landlord (which approval shall not be unreasonably withheld) assumed and agreed to be liable for the performance of the terms, covenants and conditions contained in this Lease;
- (iii) that the Leasehold Mortgagee shall give to the Landlord under such Leasehold Mortgage a copy of each notice of default by the Tenant at the same time as and whenever the said notice of default shall thereafter be given by the Leasehold Mortgagee to the Tenant;
- (iv) that any monies received by the Landlord as the result of all or part of the Lands or the Facility being taken by the exercise of a power of expropriation by any competent authority of powers of expropriation, condemnation or eminent domain shall be received and disposed of by the Landlord in accordance with the provisions of Section 17 of this Lease, except that:
  - (A) the Leasehold Mortgage shall be a lien on the compensation or purchase price paid in respect of such taking or sale to the extent the same are payable to the Tenant, and
  - (B) unless otherwise provided in this Lease, said Leasehold Mortgagee shall be entitled to the payment of the principal and interest and all other charges secured by the Leasehold Mortgage before the Tenant shall be entitled to receive any part thereof;
- (v) that prior to the institution of any proceedings by such Leasehold Mortgagee to foreclose or negotiations to accept an assignment in lieu of foreclosure:
  - (A) the Leasehold Mortgagee shall offer to the Landlord in writing the right to purchase the Leasehold Mortgage and the indebtedness that it secures at a purchase price equal to or less than the full amount then owing to the Leasehold Mortgagee under the

Leasehold Mortgage, including interest accrued and unpaid and the reasonable fees of the solicitors for the Leasehold Mortgage;

(B) the Landlord shall have fifteen (15) days after receipt of such offer from the Leasehold Mortgagee to elect to purchase the Leasehold Mortgage;

(C) the Landlord shall complete any such purchase of the Leasehold Mortgage within thirty (30) days of from the date of acceptance by the Landlord, pursuant to Section (b) above;

(b) the Landlord agrees for the benefit of the Leasehold Mortgagee that in the event of default by the Tenant under this Lease:

(i) that in the event the Landlord gives written notice of the occurrence of an event of default pursuant to this Lease to the Tenant, the Landlord shall give to the Leasehold Mortgagee under such Leasehold Mortgage a copy of each notice of default by the Tenant at the same time;

(ii) the Landlord will accept, and the Leasehold Mortgagee is entitled to perform any covenant, condition or agreement on the Tenant's part to be performed hereunder with the same force and effect as though performed by the Tenant in order to avoid forfeiture by the Tenant under this Lease;

(iii) the Landlord will not give or serve any notice of termination of this Lease upon the Tenant without first giving the Leasehold Mortgagee a reasonable time within which to institute foreclosure proceedings or, if such proceedings are not legally available, to institute other proceedings as may be legally available to the Leasehold Mortgagee, provided such Leasehold Mortgagee shall have cured any then existing default, or if such default is not curable by payment of money, be actively engaged in the curing thereof, and provided that the Leasehold Mortgagee shall continue to keep this Lease free from default except as herein provided;

(iv) the Landlord agrees that in the event of termination of the Lease before the end of the Term, the Landlord shall enter into a new lease of the Premises with the Leasehold Mortgagee for the remainder of the Term, effective immediately upon termination, at the rent and upon all of the terms, provisions, covenants and agreements contained in this Lease, subject to any rights of the parties then in possession of any part of the Premises, provided:

(A) the Leasehold Mortgagee shall make a written request to the Landlord for the new lease. The Leasehold Mortgagee shall pay, or arrange, to the reasonable satisfaction of the Landlord, for payment to the Landlord of all Basic and Additional Rent past due and all

- other monies due or payable to the Landlord by the Tenant hereunder;
- (B) the Leasehold Mortgagee shall pay to the Landlord at the time of execution and delivery of the new lease, any and all sums which would at the time of the execution and delivery of the new lease be due under this Lease but for the termination, together with reasonable expenses of the Landlord in connection with the proposed new lease;
  - (C) the Leasehold Mortgagee as tenant under the new lease shall have the same right, title and interest in and to the Premises as the Tenant had under the terminated Lease;
  - (D) the Landlord shall not warrant possession of the Premises to the Leasehold Mortgagee under the new lease, but shall lease the Premises as the Landlord then has, subject only to those matters which this Lease was subject and to those matters suffered, created or permitted to be suffered by the Tenant under the terminated Lease;
- (c) nothing herein contained shall bind or make the Leasehold Mortgagee liable to perform any of the covenants or obligations of the Tenant under this Lease, except as specifically provided for herein;
  - (d) in the event the Leasehold Mortgagee enters into possession of the Premises, pursuant to its rights under the Leasehold Mortgage, and is unable to make an assignment of this Lease to an assignee, the Leasehold Mortgagee has the right, upon not less than thirty (30) days written notice to the Landlord to surrender possession of the Premises to the Landlord and to provide a discharge of the Leasehold Mortgage and any other security it has registered against the Premises within thirty (30) days of the receipt of the notice herein by the Landlord. The Leasehold Mortgagee shall be responsible for and indemnify the Landlord against any damage to the Facility caused by the Leasehold Mortgagee or its agents during their possession of the Premises;
  - (e) the terms and conditions of the Leasehold Mortgage, including the amount thereof, shall be reasonable having regard to the method and terms of financing available, the conditions of the lending market at the time and any other relevant circumstances or considerations;
  - (f) the Leasehold Mortgage shall be entered into in good faith and at arm's length as security for the loan to finance or refinance all or any part of the capital contribution of the Tenant to the development and construction of the Facility on the Lands;

- (g) a copy of the Leasehold Mortgage shall be provided to the Landlord as soon as practicable after execution by the parties and registration at the appropriate Registry or Land Titles Office.

## **16. EXPROPRIATION**

If at any time during the Term, by exercise of any competent authority of powers of expropriation, condemnation or eminent domain, title is taken for all or any part of the Premises or the Facility, both the Landlord and the Tenant shall co-operate with each other so that each may receive the maximum award in the case of any expropriation to which they are expressly entitled in law. If the whole or any part of the Premises is expropriated, as between the parties hereto, their respective rights and obligations under this Lease shall continue until the day on which the expropriating authority takes possession thereof. If in the case of partial expropriation of the Premises, if this Lease is not frustrated by the operation of the Applicable Laws and such expropriation does not render the Premises wholly untenable, the Tenant may elect to restore the part not so taken in accordance with the repair provisions applicable in the event of destruction or damage.

## **17. ARBITRATION**

### **17.1 Application.**

The provisions of this section shall apply whenever:

- (a) the Landlord or the Tenant has the ability to refer any matter in this Lease to dispute resolution; or
- (b) any issue arises with respect to the interpretation of this Lease that the Landlord and the Tenant are unable to resolve; or
- (c) a party breaches or is alleged to have breached its obligations pursuant to this Lease (such situation being hereinafter referred to as the "Dispute").

### **17.2 Administrative Review.**

In the first instance, the Dispute shall be referred to the Chief Executive Officer of the Tenant and the Chief Administrative Officer of the City (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 parties within fifteen (15) Business Days of the reference of the Dispute, then the Dispute may, at the option of either party, be referred to the next stage of the dispute resolution process. If the Reviewers come to a mutual decision, then the parties agree to be bound by such decision.

### **17.3 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, within fifteen (15) days after receiving such notice, nominate an arbitrator and the two arbitrators shall select a chairman of the arbitral tribunal to act jointly with them. 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 either party. 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 and the chairman 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 and chairman 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 chairman and the arbitrators may determine any matters of procedure for the arbitration not specified herein;
- (b) if the 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 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. 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) 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).

#### **17.4 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 parties or is a lesser form of the relief requested by one of the parties or a combination of the forms of relief requested by the parties. Relief may include, but is not limited to:

- (a) monetary award;
- (b) suspension of rights under this Lease permanently or for a specified period;
- (c) specific order requiring a party to act or refrain from acting.

### **18. GENERAL PROVISIONS**

#### **18.1 Survival of Obligations**

The indemnity provisions of this Lease and the Landlord's rights in respect of any failure by the Tenant to perform any of its obligations under this Lease shall remain in full force and effect notwithstanding the expiration or earlier termination of the Term.

#### **18.2 Remedies Cumulative**

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

#### **18.3 Distress**

All goods and chattels of the Tenant on the Premises at any time during the Term shall be subject to distress for Rent in arrears, and the Tenant hereby irrevocably waives and renounces the benefit of any present and future legislation taking away or diminishing the Landlord's right to distrain.

#### **18.4 Relationship**

It is expressly agreed between the parties hereto that there is no intention to create a joint venture, partnership or relationship between the parties other than that of landlord



and tenant, notwithstanding any agreement herein or in other ancillary agreements relating to the construction of the Facility or the sharing of the Common Areas or other facilities.

### **18.5 Delay**

Except as expressly provided in this Lease, whenever the Landlord or Tenant is delayed in the fulfillment of any obligations under this Lease (other than the payment of Rent and surrender of the Premises on termination) by an unavoidable occurrence which is not the fault of the party delayed in performing such obligation, then the time for fulfillment of such obligation shall be extended during the period in which such circumstances operate to delay the fulfillment of such obligation.

### **18.6 Waiver**

If either the Landlord or Tenant excuses or condones any default by the other of any obligation under this Lease, no waiver of such obligation shall be implied in respect of any continuing or subsequent default.

### **18.7 Notices**

Any demand, notice or other communication (hereinafter referred to as a "**Communication**") to be given in connection with this Lease 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 Tenant:       YMCA of Western Ontario  
382 Waterloo St.  
London, ON  
N6B 2N8  
Fax: 519-667-0229  
Attention: Chief Executive Officer

To the Landlord:    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

or to such other address, or facsimile number or individual as may be designated by notice by either party to the other. 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.

### **18.8 Registration**

Neither the Tenant nor anyone claiming under the Tenant shall register this Lease, any short form or notice hereof, or any Transfer without the prior written consent of the Landlord not to be unreasonably withheld. The costs of preparation, approval and execution of any such short form, notice or any Transfer hereof shall be borne by the Tenant.

### **18.9 Rights of Landlord**

The Tenant acknowledges that it is a joint venture partner in the Landlord and, as such, may have liability as a landlord pursuant to this Lease. The Tenant agrees that nothing in this Lease intended to afford protection to or limit the liability of the Tenant acting in its capacity as landlord shall protect or limit the liability of the Tenant in its capacity as a joint venture partner of the Landlord.

### **18.10 Time of Essence**

Time is of the essence of this Lease.

### **18.11 Applicable Law**

This Lease shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

### **18.12 Severability**

All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any such provision is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in full force and bind the parties as though the illegal and unenforceable provision had never been included in this Lease.

Neither party is obliged to enforce this Lease to the extent that by so doing they would be contravening any Applicable Laws.

### **18.13 Captions and Section Numbers**

The captions and section numbers appearing in this Lease are inserted as a matter of convenience only and shall in no way limit or affect the interpretation of this Lease.

#### **18.14 Successors**

The rights and liabilities created by this Lease shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, assigns and other legal representatives excepting only that this Lease shall not enure to the benefit of any of such parties unless and only to the extent expressly permitted pursuant to the provisions of this Lease.

#### **18.15 Interpretation**

The words "hereof," "hereto" and "hereunder" and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to the Tenant includes, where the text allows, the employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant might reasonably be expected to exercise control.

#### **18.16 Entire Agreement**

This Lease and the Schedules and riders, if any, attached hereto set forth the entire agreement between the Landlord and the Tenant concerning the Premises and there are no agreements or understandings between them other than as herein set forth. This Lease, its Schedules and riders may not be modified except by agreement in writing executed by the Landlord and Tenant.

#### **18.17 Receipt of Executed Lease**

Tenant acknowledges receipt of an executed copy of this Lease.

#### **18.18 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 lease as of the day and year first above written.

LANDLORD:

**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, YMCA of Western Ontario, and the London Public Library Board

Per: \_\_\_\_\_  
Mayor, Matt Brown

Per: \_\_\_\_\_  
City Clerk, Catharine Saunders

TENANT:

**YMCA OF WESTERN ONTARIO**

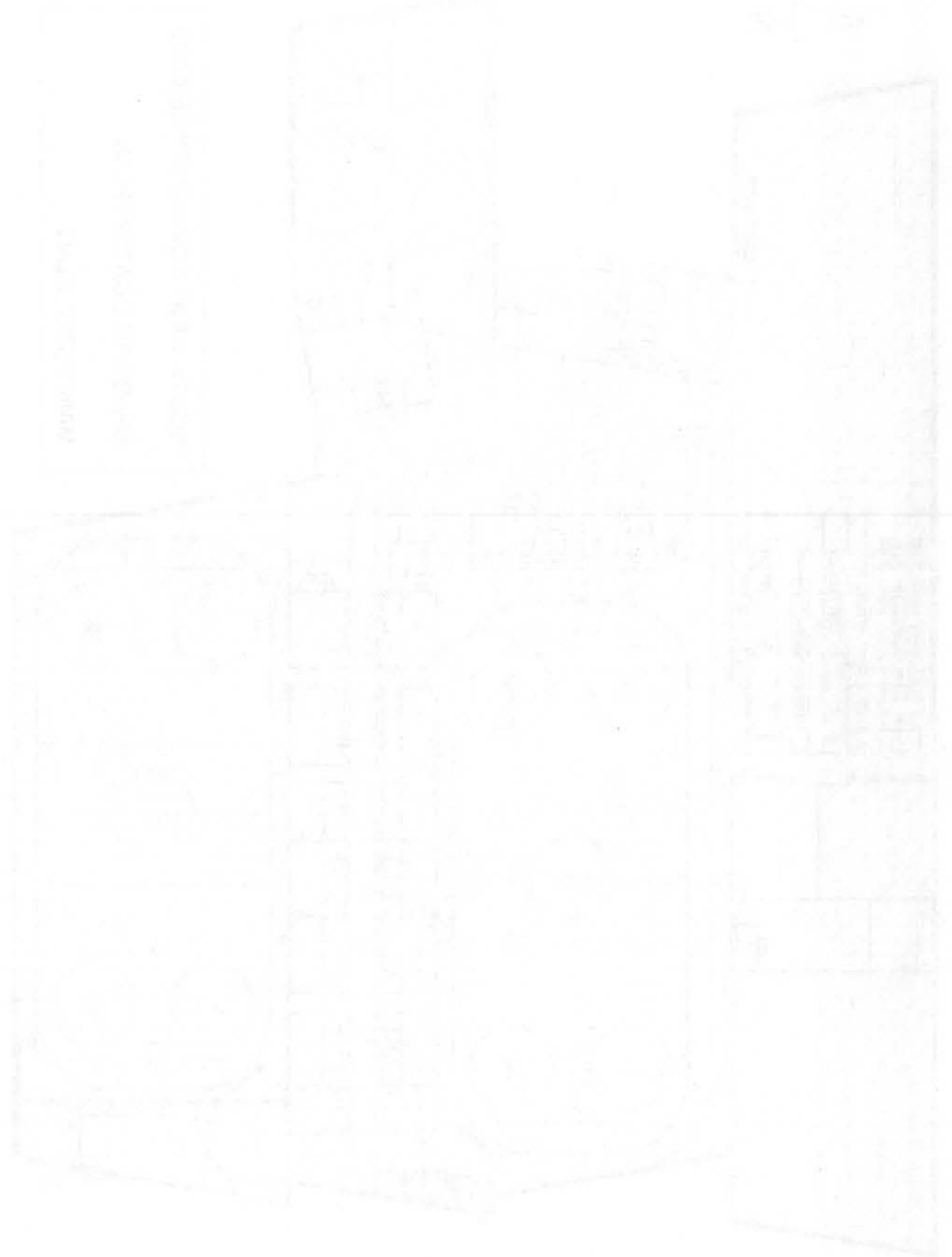
Per: \_\_\_\_\_  
Name: Andrew Lockie  
Title: Chief Executive Officer

Per: \_\_\_\_\_  
Name:  
Title: Director

SCHEDULE "A"

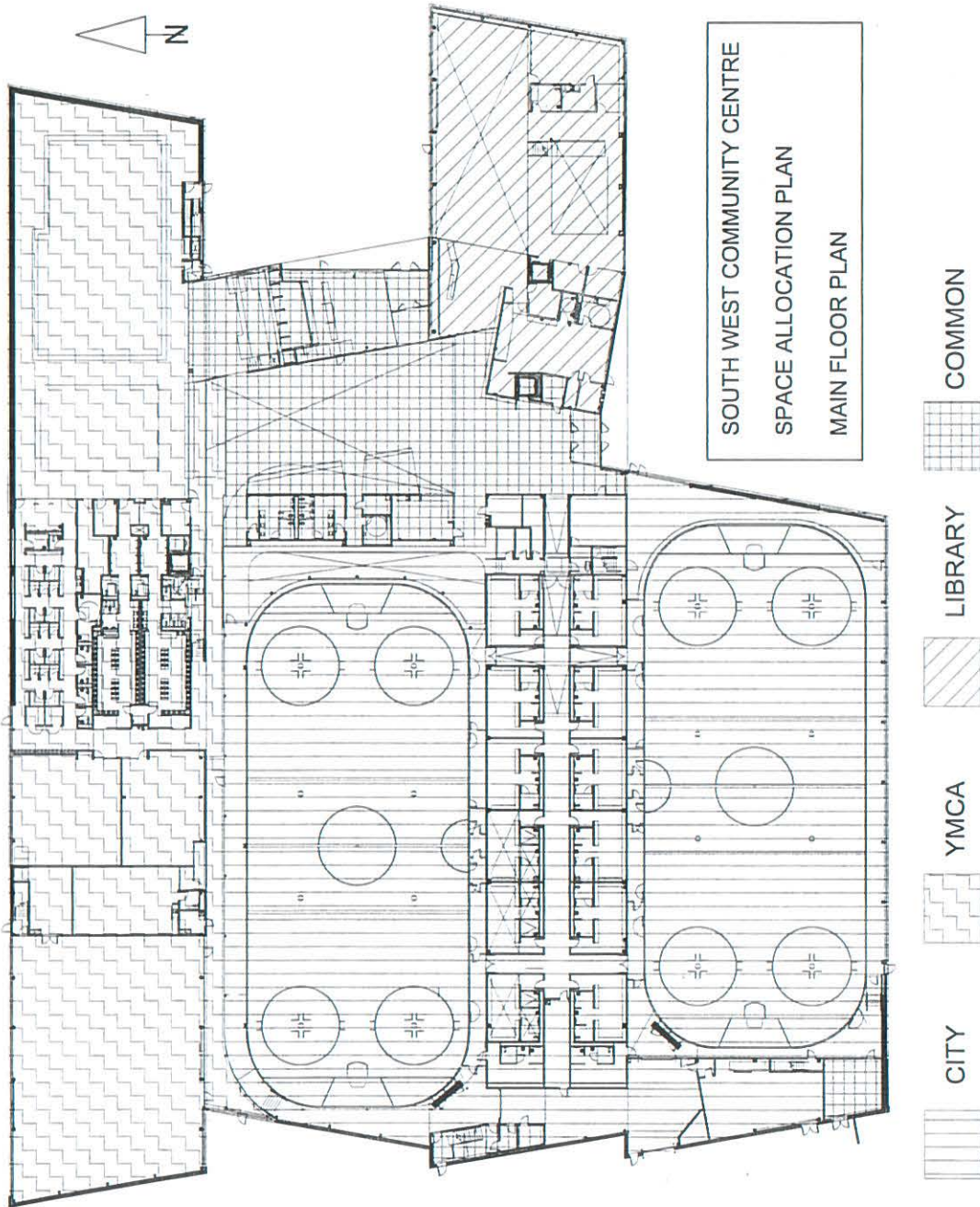
Description of Lands

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"

Description of YMCA Premises





CITY



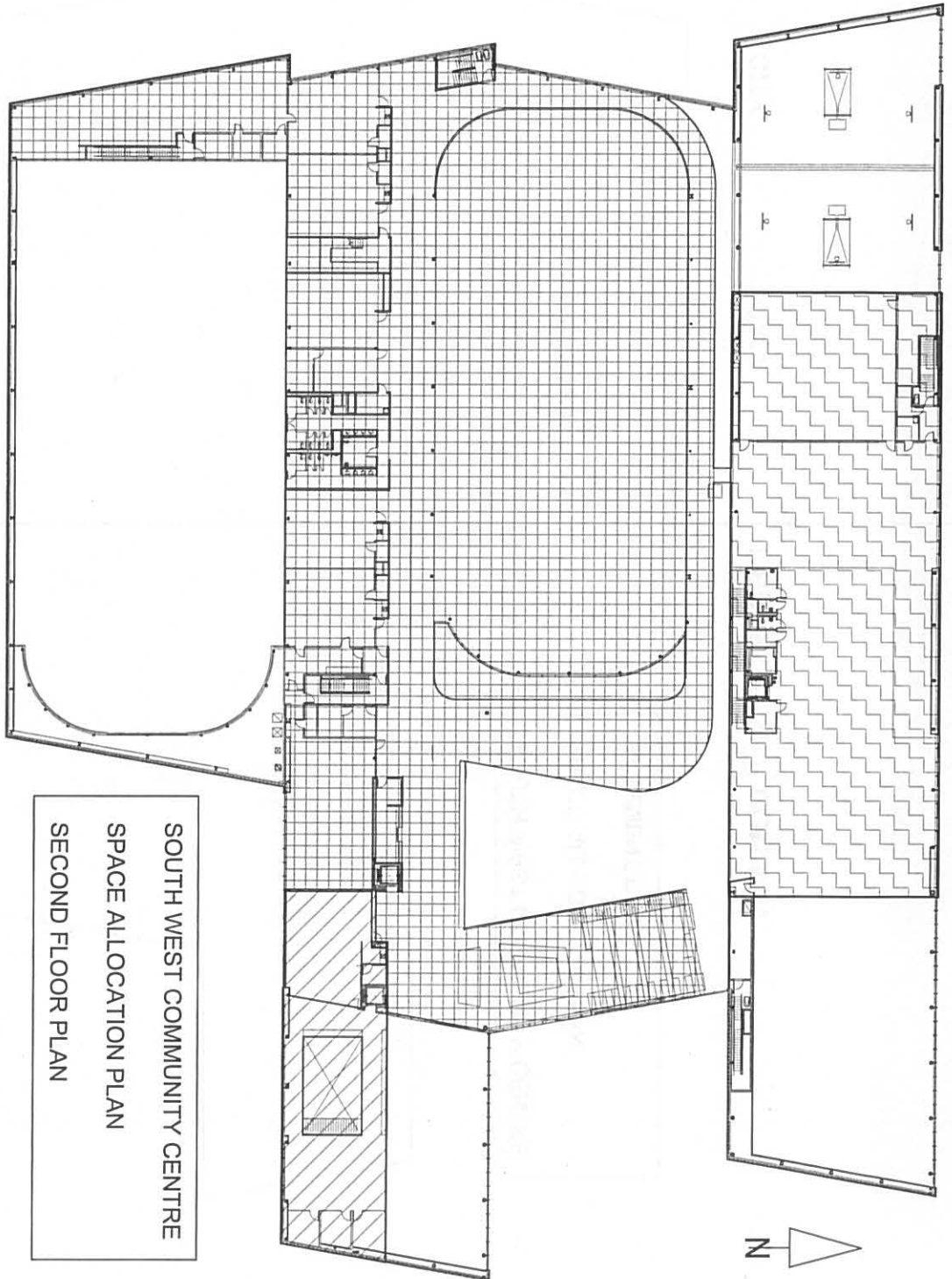
YMCA



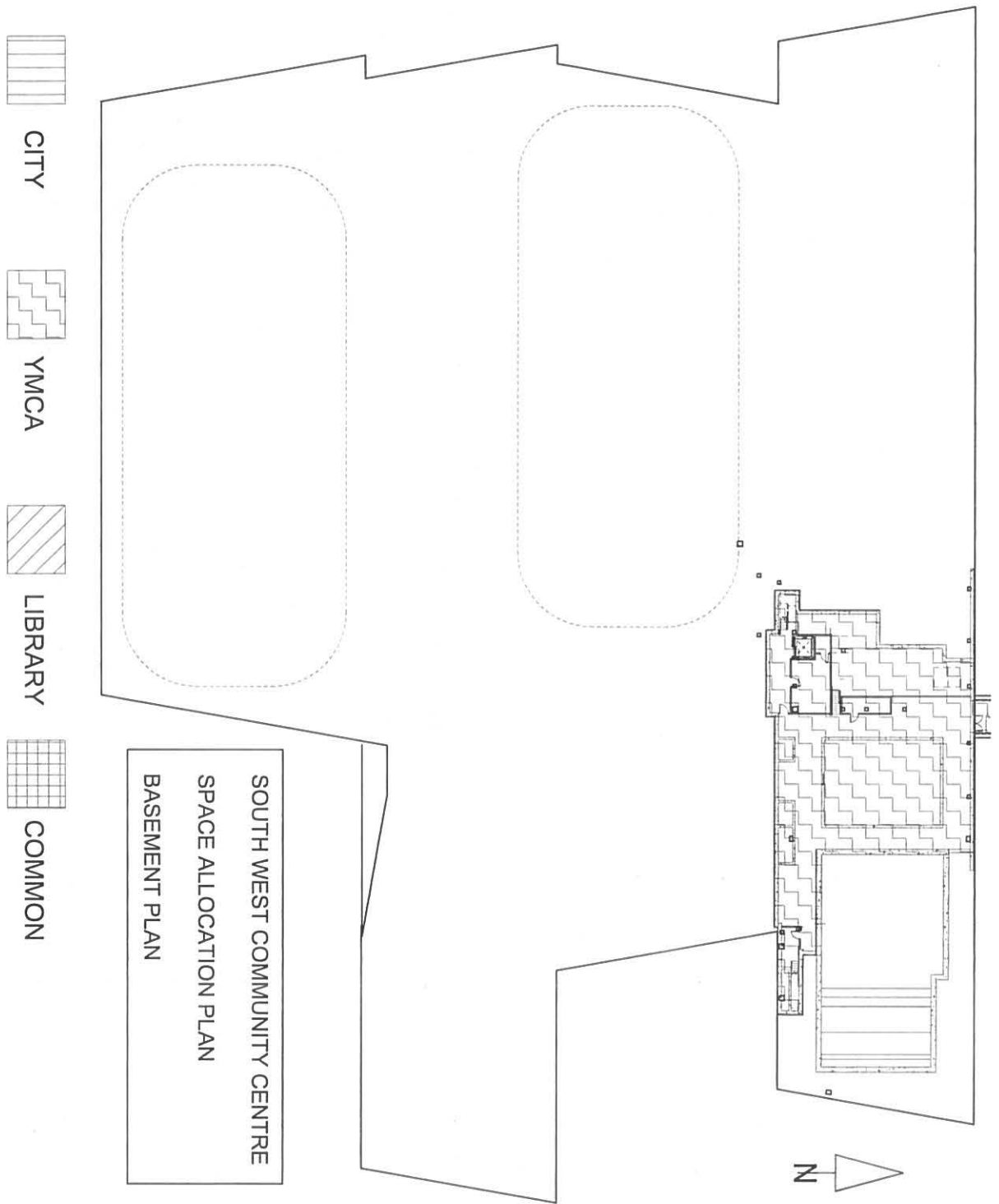
LIBRARY



COMMON



SOUTH WEST COMMUNITY CENTRE  
SPACE ALLOCATION PLAN  
SECOND FLOOR PLAN





## SCHEDULE "C"

### Library Share of Operating Costs

The Library shall contribute the following percentages for the Operating Costs to repair and maintain the Common Areas set out below:

- 9% of cost for systems that support the entire building (e.g. boiler plant or window washing)
- 5.8% for common area costs (utilities, cleaning, repair and maintenance)
- 9% for roofing
- 9% for parking (snow removal and repair)
- 9% for exterior landscape and hardscape
- 9% Exterior building face (skin)
- 0% for playgrounds and public art

For any Operating Costs incurred by the YMCA to repair and maintain the Common Areas not specifically addressed above, the parties shall negotiate such contribution of the Tenant. If the Parties cannot agree on the appropriate contribution in any such instance, it will be submitted to the Management Committee, and if agreement is not reached after such submission, shall be subject to the dispute resolution provisions of this Lease.

## SCHEDULE "D"

### City Share of Operating Costs

The City shall contribute the following percentages for the Operating Costs to repair and maintain the Common Areas set out below:

- 44% of cost for systems that support the entire building (e.g. boiler plant or window washing)
- 32.81% for common area costs (utilities, cleaning, repair and maintenance)
- 63% for roofing maintenance (number being calculated)
- 37% for parking (snow removal and repair)
- 44% Exterior building face (skin)
- 0% for exterior landscape and hardscape
- 100% for playgrounds and public art

For any Operating Costs incurred by the YMCA to repair and maintain the Common Areas not specifically addressed above, the parties shall negotiate such contribution of the Tenant. If the Parties cannot agree on the appropriate contribution in any such instance, it will be submitted to the Management Committee, and if agreement is not reached after such submission, shall be subject to the dispute resolution provisions of this Lease.

## SCHEDULE "E"

### City Share of Capital Expenditures

The City shall contribute the following percentages for the Capital Expenditures set out below:

- 44% of cost for systems that support the entire building (e.g. boiler plant)
- 32.81% for systems that support the common area of the building
- 63% for roofing
- 37% for parking
- 44% Exterior building face (skin)
- 0% for exterior landscape and hardscape
- 100% for playgrounds and public art

For any Capital Expenditures not specifically addressed above, the parties shall negotiate such contribution of the Tenant. If the Parties cannot agree on the appropriate contribution in any such instance, it will be submitted to the Management Committee, and if agreement is not reached after such submission, shall be subject to the dispute resolution provisions of this Lease.



## SCHEDULE "D"

### ARENA AND SERVICE LONDON LEASE

#### ARENA AND SERVICE LONDON LEASE AGREEMENT

THIS LEASE made as of the \_\_\_ day of \_\_\_\_\_, 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 -

**THE CORPORATION OF THE CITY OF LONDON** (the "**Tenant**")

#### WHEREAS:

- A. Pursuant to a Joint Venture Agreement (the "**Joint Venture Agreement**") dated 2016, the City, the YMCA, and the Library (as hereinafter defined), agreed to enter into a joint venture for the purpose of 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 deliver the Lands and the Facility to the Southwest Community Centre Joint Venture, to operate the Facility;
- C. The Tenant wishes to lease the Arena and Service London Premises (as hereinafter defined) following completion of construction of the Facility (as hereinafter defined).

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 and Service London Premises"** means that portion of the Facility as described in Schedule "B" attached which is leased to the Tenant pursuant to the terms of this Lease;;
- (d) **"Basic Rent"** means the rent payable under Section 4.1;
- (e) **"Business Tax"** means the taxes under Section 7.1;
- (f) **"Capital Expenditures"** means major repairs to or replacement of the major components in any area of the Facility including Common Areas but excluding the Arena and Service London Premises, 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, roof, mechanical, heating, venting, air-conditioning, electrical and plumbing fixtures and equipment serving the totality of the Facility (for greater certainty excluding building systems servicing the Arena and Service London Premises, the paved surfaces of the Common Areas (not including striping) but specifically excluding Common Area Costs and each of the following:
  - (i) repairs or replacements of furnishings, furniture or equipment of the 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;
- (g) **"City"** means The Corporation of the City of London;
- (h) **"Commencement Date"** means the date on which the Term commences under Section 2.1;
- (i) **"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);

- (j) **“Facility”** means the multi-use community centre constructed or to be constructed on the Lands;
- (k) **“Lands”** means the property described in Schedule “A” attached hereto;
- (l) **“Library”** means the London Public Library;
- (m) **“Library Premises”** means that part of the Facility operated the Library as a branch library;
- (n) **“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)

- (o) **"Person"** means any person, firm, partnership or corporation, or any group or combination of persons, firms, partnerships or corporations;
- (p) **"Project"** means the Facility and the Lands;
- (q) **"Project Interest"** means the Tenant's interest in the Joint Venture as described in the joint Venture Agreement;
- (r) **"Realty Taxes"** means the taxes under Section 7.2;
- (s) **"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;
- (t) **"Rentable Area of the Facility"** means the area in square feet of the Arena and Service London Premises, the Library Premises and the YMCA Premises, excluding areas designated as Common Areas by the Landlord;
- (u) **"Rents"** means the aggregate of Basic Rent and Additional Rent;
- (v) **"Sales Tax"** means those taxes as set out in Section 6;
- (w) **"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;



- (x) **"Term"** means the period set out in Section 2.1;
- (y) **"Transfer"** means an assignment of this Lease in whole or in part, a sublease of all of the Arena and Service London Premises, any transaction whereby the rights of the Tenant under this Lease or to the Arena and Service London Premises are transferred to another Person, any transaction by which any right of use or occupancy of all or any part of the Arena and Service London 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 Arena and Service London Premises;
- (z) **"YMCA Premises"** means that part of the Facility leased to the YMCA under the YMCA Lease; and
- (aa) **"YMCA Lease"** means the lease between the Landlord and the YMCA whereby the Landlord leases a portion of the Facility to the YMCA.

## 2. TERM

### 2.1 Term

Subject to Section 2.3, this Lease is granted for a term of forty (40) years (the **"Term"**) commencing on Substantial Completion of the Facility.

### 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.

## 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 Arena and Service London Premises.

### 3.2 Use

The Tenant shall use the Arena and Service London Premises for the purpose of operation of an arena and Service London kiosk and ancillary services and shall not use the Arena and Service London Premises for any other purpose without the express written consent of the Landlord, which consent shall not be unreasonably withheld.

### 3.3 Use of Common Areas

The use and operation by the Tenant of the Arena and Service London Premises shall entitle the Tenant to the use in common with the YMCA and the Library 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, licenses and/or approvals, during the Term pertaining to or affecting the Arena and Service London Premises and any and all governmental or municipal regulations relating to the continued use, condition and occupation of the Arena and Service London Premises.
- (b) Upon request, the Tenant shall provide to the Landlord, acting reasonably, satisfactory evidence of compliance by the Tenant with all Applicable Laws.

### **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 Arena and Service London Premises with the prior written consent of the Landlord as to design, size, location and method of installation, such consent not to be unreasonably withheld; provided that no such consent shall be required in respect of public notices and signs located on the interior walls of the Arena and Service London Premises (whether temporary or permanent) or located on the exterior windows and door of the Arena and Service London Premises. Such signs shall be installed, maintained and operated at the sole expense of the Tenant.

## **4. RENT AND EXPENDITURES**

### **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**

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

#### **4.3 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 for any costs, charges, expenses and outlays of any nature arising from or relating to the Arena and Service London Premises, or the contents thereof, excepting only specific Landlord covenants contained herein, and the Tenant or the YMCA shall pay all charges, impositions, costs and expenses of every nature and kind, except as otherwise specifically provided, relating to the Arena and Service London Premises and the Tenant covenants with the Landlord accordingly.

#### **6. HARMONIZED SALES TAX**

Notwithstanding any other paragraph or provision of this Lease, with respect to any and all payments to be made by the Tenant hereunder, the Tenant shall pay 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 party to whom the payment is owed, 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 party to whom all such payments are owed shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes payable by the party to whom the payment is owed. The amount of the Sales Taxes so payable by the Tenant shall be calculated by the party to whom the payment is owed in accordance with the applicable legislation and shall be paid to the party to whom the payment is owed at the same time as the amounts to which such Sales Taxes apply, are payable to the party to whom the payment is owed under the terms of this Lease, or upon demand at such other time or times as the party to whom the payment is owed from time to time determines.

#### **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 Arena and Service London Premises or in respect of the personal property or business of the Tenant on the Arena and Service London Premises and the Tenant's use of the Arena and Service London 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 Arena and Service London Premises, the Landlord may allocate Business Tax to the Arena and Service London Premises in such reasonable manner as may be agreed upon by the Tenant and the Landlord and the Tenant shall pay all such allocations to the Landlord not less than 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 Arena and Service London 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 Arena and Service London Premises, the Landlord may allocate Realty Tax to the Arena and Service London Premises in such reasonable manner as may be agreed upon by the Tenant and the Landlord and the Tenant shall pay all such allocations 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 Facility 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 Landlord 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 Arena and Service London 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. OBLIGATIONS OF THE PARTIES**

### **8.1 Tenant's Obligations**

During the Term the Tenant shall:

- (a) perform all the covenants of the Tenant contained herein;
- (b) maintain and keep the Arena and Service London Premises, and the appurtenances and equipment therein and thereon, to the Repair Standard as provided in Section 9.1 hereof; and
- (c) 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 Common Areas or the YMCA Premises 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 Arena and Service London 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, REPAIR AND CLEANING**

### **9.1 Maintenance and Repair by the Tenant**

The Tenant covenants with the Landlord to repair and maintain the Arena and Service London Premises in a reasonable state of repair and in good operating condition (the "**Repair Standard**"). Without limiting the generality of the foregoing, the Tenant agrees that it will at all times keep the Arena and Service London Premises (including exterior

entrances, if any, and all glass and windows, all partitions, doors, fixtures, equipment, and excluding ducts and units of the mechanical, heating, and air-conditioning systems) in good order, condition and repair (including periodic painting or redecorating and preventative maintenance as reasonably determined by the Landlord) and including such repairs and replacements as are required to keep the Arena and Service London Premises 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.

If the Tenant refuses or neglects to maintain or 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 (5%) percent on said cost from date of completion of the repairs by the Landlord to the date of payment by the Tenant.

## **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 Arena and Service London Premises, or the occupancy or use by the Tenant or occasioned wholly or in part by any act or omission of the Tenant, its officers, employees, agents, contractors, invitees, licensees or volunteers or due to or arising out of any breach by the Tenant of this Lease, except to the extent contributed to by the Landlord, its councillors, employees, agents, contractors, invitees, licensees or by any Person permitted by the Landlord to be at the Facility.

### **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 property management or other activities on the Lands or the occupancy or use by the Landlord or other permitted occupants of the Arena and Service London Premises of the Lands or Facility or occasioned wholly or in part by any act or omission of the Landlord, its officers, employees, agents, contractors, invitees or licensees 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 to the Landlord 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) 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;
- (d) a trustee, receiver, receiver/manager, or a Person acting in a similar capacity is appointed with respect to the business or assets of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a Transfer approved by the Landlord;

- (f) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within thirty (30) days after the date of such taking; or
- (g) any insurance policy covering any part of the Arena and Service London Premises is, or is threatened to be (unless Tenant remedies the condition giving rise to threatened cancellation within fifteen (15) days 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**

If and whenever an Event of Default occurs under Section 12.1, then without prejudice to any other rights which it or any other party 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 Arena and Service London Premises and repossess the Arena and Service London Premises and, in either case, enjoy them as of its former estate, and any improvements to the Arena and Service London Premises 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 Arena and Service London 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 Arena and Service London Premises as agent of the Tenant and to find another Person to operate the Arena and Service London Premises and to enter into a new lease for the Arena and Service London Premises for whatever length, and on such reasonable 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 Arena and Service London 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 Arena and Service London Premises; and to apply the proceeds of any such reletting 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 Arena and Service London 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, excepting for any negligence of the Landlord, then 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 Arena and Service London Premises.

### 12.3 Costs

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

## 13. DAMAGE OR DESTRUCTION

### 13.1 Damage to Arena and Service London Premises

- (a) If the Arena and Service London Premises is at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty required to be insured against by the Tenant pursuant to Section 10.1 or otherwise insured against by the Landlord, and if as a result of such occurrence:
  - (i) the Arena and Service London Premises is rendered untenable only in part, in the opinion of the Landlord's architect delivered to the parties within sixty (60) days after any damage or destruction, this Lease shall continue in full force and effect and the Tenant shall, subject to Section 13.1(c) hereof, commence diligently and with reasonable speed thereafter, to reconstruct, rebuild or repair the Arena and Service London Premises. Rent shall abate proportionately to the portion of the Arena and Service London Premises rendered untenable from the date of the destruction or damage until the earlier of: (i) ninety (90) days after the Arena and Service London Premises has been restored and rendered tenantable, and (ii) the

date the Arena and Service London Premises is reopened for business; and

- (ii) the Arena and Service London Premises is rendered wholly untenable in the opinion of the Landlord's Architect delivered to the parties within sixty (60) days after any damage or destruction, this Lease shall continue in full force and effect and the Tenant shall, subject to Section 13.**Error! Reference source not found.** and 13.1(c) hereof, commence diligently and with reasonable speed thereafter, to reconstruct, rebuild or repair the Arena and Service London Premises. Rent shall abate from the date of the destruction or damage until the earlier of: (i) ninety (90) days after the Arena and Service London Premises has been restored and rendered tenable, and (ii) the date the Arena and Service London Premises is reopened for business.
- (b) Notwithstanding anything contained in Section 13.1(a), if the Facility is damaged or destroyed by any cause whatsoever and if, in the opinion of the Landlord's architect delivered to the parties within sixty (60) days after any damage or destruction, the Facility cannot be rebuilt or made fit for the purposes of the Tenant within one hundred and eighty (180) days of the happening of the damage or destruction, the Landlord or the Tenant may, at its option, elect to terminate this Lease by giving to the other, within thirty (30) days after receipt of the architect's opinion, notice of termination and thereupon Rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid up to the date of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Arena and Service London Premises to the Landlord in accordance with the terms of this Lease. In the event of termination hereunder that portion of the Replacement Reserve Fund including interest earned thereon that has been contributed by the Tenant shall be paid and transferred to the Tenant.
- (c) In each of the foregoing cases, the Landlord agrees that proceeds of insurance shall be made available to the Tenant for the purposes of discharging its obligations hereunder. Any proceeds in excess of the costs actually incurred shall be retained by the Tenant for its own use.

## **14. TRANSFER AND SUBLETTING**

### **14.1 Consent Required**

The Tenant shall not enter into, consent to, or permit any Transfer without prior written consent of the Landlord.

### **14.2 Assignment by Landlord**

The Landlord shall have the unrestricted right to sell, transfer, lease, charge or otherwise dispose of all or any part of its interest in the Lands or any interest of the

Landlord in this Lease. In the event of any sale, transfer, lease, charge or other disposition (an "**Assignment**"), to the extent that the assignee from the Landlord agrees with the Landlord to assume the obligations of the Landlord under this Lease, the Landlord shall thereupon and without further agreement be released of all liability under this Lease except to the extent such liability relates to the period prior to the Assignment.

## **15. EXPROPRIATION**

If at any time during the Term, by exercise of any competent authority of powers of expropriation, condemnation or eminent domain, title is taken for all or any part of the Arena and Service London Premises or the Facility, both the Landlord and the Tenant shall co-operate with each other so that each may receive the maximum award in the case of any expropriation to which they are expressly entitled in law. If the whole or any part of the Arena and Service London Premises is expropriated, as between the parties hereto, their respective rights and obligations under this Lease shall continue until the day on which the expropriating authority takes possession thereof. If in the case of partial expropriation of the Arena and Service London Premises, if this Lease is not frustrated by the operation of the Applicable Laws and such expropriation does not render the Arena and Service London Premises wholly untenable, the Tenant may elect to restore the part not so taken in accordance with the repair provisions applicable in the event of destruction or damage.

## **16. ARBITRATION**

### **16.1 Application**

The provisions of this section shall apply:

- (a) whenever a party hereto has the ability to refer any matter in this Lease to dispute resolution; or
- (b) whenever any issue arises with respect to the interpretation of this Lease that the applicable parties are unable to resolve;
- (c) any issue which arises relating to the determinations made in the Lifecycle Study; or
- (d) whenever a party breaches or is alleged to have breached its obligations pursuant to this Lease (such situation being hereinafter referred to as the "**Dispute**").

### **16.2 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. Each of the other parties shall, within fifteen (15) days after receiving such notice, nominate an arbitrator and, if there are two parties to the Dispute, the two arbitrators shall select a chairman of the arbitral tribunal to act jointly with them; if there are three parties to the Dispute, 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 either party. 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 and the chairman 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 and chairman 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 chairman and 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 arbitrator(s) nominated by the other parties, as applicable, may proceed alone to determine the dispute in such manner and at such time as he, she or they shall think fit and his, her or their decision shall, subject to the provisions hereof, be binding upon the parties. 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 1(b) shall apply, mutatis mutandis;
- (c) 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).

### **16.3 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 parties or is a lesser form of the relief requested by one of the parties or a combination of the forms of relief requested by the parties. Relief may include, but is not limited to:

- (a) monetary award;

- (b) suspension of rights under this Lease permanently or for a specified period;
- (c) specific order requiring a party to act or refrain from acting.

## **17. GENERAL PROVISIONS**

### **17.1 Survival of Obligations**

The indemnity provisions of this Lease and the Landlord's rights in respect of any failure by the Tenant to perform any of its obligations under this Lease shall remain in full force and effect notwithstanding the expiration or earlier termination of the Term.

### **17.2 Remedies Cumulative**

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

### **17.3 Distress**

All goods and chattels of the Tenant on the Arena and Service London Premises at any time during the Term shall be subject to distress for Rent in arrears, and the Tenant hereby irrevocably waives and renounces the benefit of any present and future legislation taking away or diminishing the Landlord's right to distrain.

### **17.4 Relationship**

It is expressly agreed between the parties hereto that there is no intention to create a joint venture, partnership or relationship between the parties other than that of landlord, tenant, and independent contractors, notwithstanding any agreement herein or in other ancillary agreements.

### **17.5 Delay**

Except as expressly provided in this Lease, whenever a party hereto is delayed in the fulfillment of any obligations under this Lease (other than the payment of Rent and surrender of the Arena and Service London Premises on termination) by an unavoidable occurrence which is not the fault of the party delayed in performing such obligation, then the time for fulfillment of such obligation shall be extended during the period in which such circumstances operate to delay the fulfillment of such obligation.

### **17.6 Waiver**

If any party hereto excuses or condones any default by any other of any obligation under this Lease, no waiver of such obligation shall be implied in respect of any continuing or subsequent default.

### **17.7 Notices**

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

To the Tenant:

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 Landlord:

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

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 effect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery or by facsimile.

### **17.8 Registration**



Neither the Tenant nor anyone claiming under the Tenant shall register this Lease, any short form or notice hereof, or any Transfer without the prior written consent of the Landlord, not to be unreasonably withheld. The costs of preparation, approval and execution of any such short form, notice or any Transfer hereof shall be borne by the Tenant.

#### **17.9 Time of Essence**

Time is of the essence of this Lease.

#### **17.10 Applicable Law**

This Lease shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

#### **17.11 Severability**

All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any such provision is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in full force and bind the parties as though the illegal and unenforceable provision had never been included in this Lease.

No party is obliged to enforce this Lease to the extent that by so doing they would be contravening any Applicable Laws.

#### **17.12 Captions and Section Numbers**

The captions and section numbers appearing in this Lease are inserted as a matter of convenience only and shall in no way limit or affect the interpretation of this Lease.

#### **17.13 Successors**

The rights and liabilities created by this Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, excepting only that this Lease shall not enure to the benefit of any of such successors or assignees unless and only to the extent expressly permitted pursuant to the provisions of this Lease.

#### **17.14 Interpretation**

The words "hereof," "hereto" and "hereunder" and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to the Tenant includes, where the text allows, the employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant might reasonably be expected to exercise control.

#### **17.15 Entire Agreement**

This Lease and the Schedules and riders, if any, attached hereto set forth the entire agreement between the Landlord, the Tenant concerning the Arena and Service London Premises and there are no agreements or understandings between them other than as herein set forth. This Lease, its Schedules and riders may not be modified except by agreement in writing executed by the parties hereto.

**17.16 Receipt of Executed Lease**

Tenant acknowledges receipt of an executed copy of this Lease.

IN WITNESS WHEREOF the parties hereto have executed this lease as of the day and year first above written.

LANDLORD:

**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 CORPORATION OF THE CITY OF LONDON**

Per:

\_\_\_\_\_  
Matt Brown, Mayor

Per:

\_\_\_\_\_  
Catharine Saunders, City Clerk

TENANT:

**THE CORPORATION OF THE CITY OF LONDON**

Per:

\_\_\_\_\_  
Matt Brown, Mayor

Per:

\_\_\_\_\_  
Catharine Saunders, City Clerk

**SCHEDULE "A"**

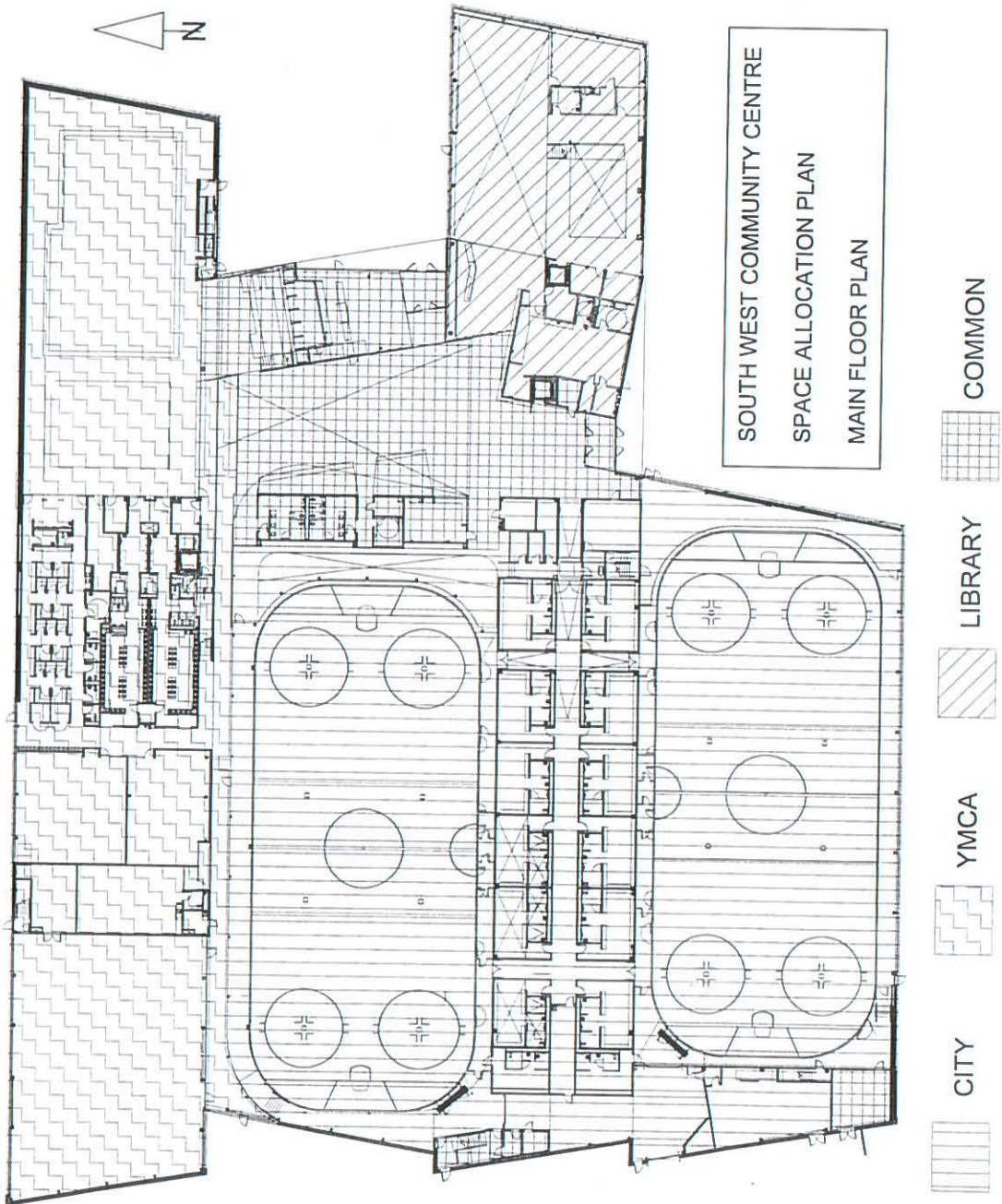
**DESCRIPTION OF LANDS**

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"

DESCRIPTION OF ARENA AND SERVICE LONDON PREMISES



## **SCHEDULE "C"**

### **CITY SHARE OF OPERATING COSTS**

The City shall contribute the following percentages for the Operating Costs to repair and maintain the Common Areas set out below:

- 44% of cost for systems that support the entire building (e.g. boiler plant or window washing)
- 32.81% for common area costs (utilities, cleaning, repair and maintenance)
- 63% for roofing maintenance
- 37% for parking (snow removal and repair)
- 44% Exterior building face (skin)
- 0% for exterior landscape and hardscape
- 100% for playgrounds and public art

For any Operating Costs incurred by the YMCA to repair and maintain the Common Areas not specifically addressed above, the parties shall negotiate such contribution of the Tenant. If the Parties cannot agree on the appropriate contribution in any such instance, it will be submitted to the Management Committee, and if agreement is not reached after such submission, shall be subject to the dispute resolution provisions of this Lease.

## **SCHEDULE "D"**

### **CITY SHARE OF CAPITAL EXPENDITURES**

The City shall contribute the following percentages for the Capital Expenditures set out below:

- 44% of cost for systems that support the entire building (e.g. boiler plant)
- 32.81% for systems that support the common area of the building
- 63% for roofing
- 37% for parking
- 44% Exterior building face (skin)
- 0% for exterior landscape and hardscape
- 100% for playgrounds and public art

For any Capital Expenditures not specifically addressed above, the parties shall negotiate such contribution of the Tenant. If the Parties cannot agree on the appropriate contribution in any such instance, it will be submitted to the Management Committee, and if agreement is not reached after such submission, shall be subject to the dispute resolution provisions of this Lease.

**SCHEDULE "E"**

**LIBRARY LEASE**

**LIBRARY LEASE AGREEMENT**

THIS LEASE made as of the \_\_\_\_ day of June, 2016.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF LONDON** as trustee 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 -

**LONDON PUBLIC LIBRARY BOARD** (the "**Tenant**")

**WHEREAS:**

- A. Pursuant to a Joint Venture Agreement (the "**Joint Venture Agreement**") dated June 2016, the City, the YMCA, and the Library (as hereinafter defined), 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 deliver the Lands and the Facility to the Southwest Community Centre Joint Venture, to operate the Facility;
- C. The Tenant wishes to lease the Library Premises (as hereinafter defined) following completion of construction of the Facility (as hereinafter defined).

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 and Service London Premises**" means that portion of the Facility operated by the City as an arena and Service London kiosk;

- (d) **"Basic Rent"** means the rent payable under Section 4.1;
- (e) **"Business Tax"** means the taxes under Section 7.1;
- (f) **"Capital Expenditures"** means major repairs to or replacement of the major components in any area of the Facility including Common Areas but excluding the Arena Premises, 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, roof, mechanical, heating, venting, air-conditioning, electrical and plumbing fixtures and equipment serving the totality of the Facility (for greater certainty excluding building systems servicing the Arena Premises, the paved surfaces of the Common Areas (not including striping) but specifically excluding Common Area Costs and each of the following:
  - (i) repairs or replacements of furnishings, furniture or equipment of the 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;
- (g) **"City"** means The Corporation of the City of London;
- (h) **"Commencement Date"** means the date on which the Term commences under Section 2.1;
- (i) **"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 Premises);

- (j) **"Facility"** means the multi-use community centre constructed or to be constructed on the Lands;
- (k) **"Lands"** means the property described in Schedule A" attached hereto;
- (l) **"Library"** means the London Public Library;
- (m) **"Library Premises"** means that portion of the Facility as described in Schedule B" attached which is leased to the Tenant pursuant to the terms of this Lease;
- (n) **"Lifecycle Study"** means that certain study to be conducted prior to the end of the first year of the Term by the Landlord to determine the appropriate contributions to the Replacement Reserve Fund;
- (o) **"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 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 Premises)

- (p) **"Person"** means any person, firm, partnership or corporation, or any group or combination of persons, firms, partnerships or corporations;
- (q) **"Project"** means the Facility and the Lands;
- (r) **"Project Interest"** means the Tenant's interest in the Joint Venture as described in the joint Venture Agreement;
- (s) **"Realty Taxes"** means the taxes under Section 7.2;
- (t) **"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;
- (u) **"Rentable Area of the Facility"** means the area in square feet of the Library Premises, the Arena Premises and the YMCA Premises, excluding areas designated as Common Areas by the Landlord;
- (v) **"Rents"** means the aggregate of Basic Rent and Additional Rent;
- (w) **"Replacement Reserve Fund"** means the fund to be established by the YMCA to fund Capital Expenditures, the rate of contribution for which each year during the Term, after the first year, will be determined from the results of the Lifecycle Study but in any event 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;
- (x) **"Sales Tax"** means those taxes as set out in Section 6;

- (y) **"Substantial Completion of the Facility"** means the date upon which the Facility is substantially completed as defined in the Construction Lien Act and the Library Premises are available for occupancy by the Tenant;
- (z) **"Tenant's 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;
- (aa) **"Term"** means the period set out in Section 2.1;
- (bb) **"Transfer"** means an assignment of this Lease in whole or in part, a sublease of all of the Library Premises, any transaction whereby the rights of the Tenant under this Lease or to the Library Premises are transferred to another Person, any transaction by which any right of use or occupancy of all or any part of the Library 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 Library Premises;
- (cc) **"YMCA Premises"** means that part of the Facility leased to the YMCA under the YMCA Lease; and
- (dd) **"YMCA Lease"** means the lease between the Landlord and the YMCA whereby the Landlord leases a portion of the Facility to the YMCA.

## 2. TERM

### 2.1 Term

Subject to Section 2.3, this Lease is granted for a term of forty (40) years (the **"Term"**) commencing on Substantial Completion of the Facility.

### 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.

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 on its own behalf 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 Library Premises.

### **3.2 Use**

The Tenant shall use the Library Premises for the purpose of operation of a public library and ancillary services and shall not use the Library Premises for any other purpose without the express written consent of the Landlord, which consent shall not be unreasonably withheld.

### **3.3 Use of Common Areas**

The use and operation by the Tenant of the Library Premises shall entitle the Tenant to the use in common with the YMCA and the City 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, licenses and/or approvals, during the Term pertaining to or affecting the Library Premises and any and all governmental or municipal regulations relating to the continued use, condition and occupation of the Library Premises.
- (b) Upon request, the Tenant shall provide to the Landlord, acting reasonably, satisfactory evidence of compliance by the Tenant with all Applicable Laws.

### **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 Library Premises with the prior written consent of the Landlord as to design, size, location and method of installation, such consent not to be unreasonably withheld; provided that no such consent shall be required in respect of public notices and signs located on the interior walls of the Library Premises (whether temporary or permanent) or located on the exterior windows and door of the Library Premises. Such signs shall be installed, maintained and operated at the sole expense of the Tenant.

## **4. RENT AND EXPENDITURES**

### **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**

Pursuant to the YMCA Lease, the YMCA is responsible for all Operating Costs and Capital Expenditures. The Library shall reimburse the YMCA for its share of all Operating Costs incurred by the YMCA 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 Tenant shall be responsible for repairing and maintaining the Library Premises at the expense of the Tenant. Each year during the term of this Lease the Tenant shall also pay to the YMCA for deposit into the Replacement Reserve Fund the Tenant's Proportionate Share of the required annual contribution to the Replacement Reserve Fund determined from the Lifecycle Study.

#### **4.3 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 for any costs, charges, expenses and outlays of any nature arising from or relating to the Library Premises, or the contents thereof, excepting only specific Landlord covenants contained herein, and the Tenant or the YMCA shall pay all charges, impositions, costs and expenses of every nature and kind, except as otherwise specifically provided, relating to the Library Premises and the Tenant covenants with the Landlord accordingly.

### **6. HARMONIZED SALES TAX**

Notwithstanding any other paragraph or provision of this Lease, with respect to any and all payments to be made by the Tenant hereunder, the Tenant shall pay 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 party to whom the payment is owed, 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 party to whom all such payments are owed shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes payable by the party to whom the payment is owed. The amount of the Sales Taxes so payable by the Tenant shall be calculated by the party to whom the payment is owed in accordance with the applicable legislation and shall be paid to the party to whom the payment is owed at the same time as the amounts to which such Sales Taxes apply, are payable to the party to whom the

payment is owed under the terms of this Lease, or upon demand at such other time or times as the party to whom the payment is owed from time to time determines.

## **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 Library Premises or in respect of the personal property or business of the Tenant on the Library Premises and the Tenant's use of the Library 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 Library Premises, the Landlord may allocate Business Tax to the Library Premises in such reasonable manner as may be agreed upon by the Tenant and the Landlord and the Tenant shall pay all such allocations 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 Library 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 Library Premises, the Landlord may allocate Realty Tax to the Library Premises in such reasonable manner as may be agreed upon by the Tenant and the Landlord and the Tenant shall pay all such allocations 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 Facility 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 Landlord 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 Library 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. OBLIGATIONS OF THE PARTIES**

#### **8.1 Tenant's Obligations**

During the Term the Tenant shall:

- (a) perform all the covenants of the Tenant contained herein;
- (b) maintain and keep the Library Premises, and the appurtenances and equipment therein and thereon, to the Repair Standard as provided in Section 9.1 hereof; and
- (c) 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 Common Areas or the YMCA Premises or the Arena 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 Library 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, REPAIR AND CLEANING**

#### **9.1 Maintenance and Repair by the Tenant**

The Tenant covenants with the Landlord to repair and maintain the Library Premises in a reasonable state of repair and in good operating condition (the "**Repair Standard**"). Without limiting the generality of the foregoing, the Tenant agrees that it will at all times keep the Library Premises (including exterior entrances, if any, and all glass and windows, all partitions, doors, fixtures, equipment, and excluding ducts and units of the mechanical, heating, and air-conditioning systems) in good order, condition and repair (including periodic painting or redecorating and preventative maintenance as reasonably determined by the Landlord) and including such repairs and replacements as are required to keep the Library Premises 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.

If the Tenant refuses or neglects to maintain or 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.

## **10. INSURANCE**

### **10.1 Tenant's Insurance**

The Tenant shall effect and maintain during the Term:

- (d) 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 Library Premises, or the occupancy or use by the Tenant or occasioned wholly or in part by any act or omission of the Tenant, its officers, employees, agents, contractors, invitees, licensees or volunteers or due to or arising out of any breach by the Tenant of this Lease, except to the extent contributed to by the Landlord, its councillors, employees, agents, contractors, invitees, licensees or by any Person permitted by the Landlord to be at the Facility.

### **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 property management or other activities on the Lands or the occupancy or use by the Landlord or other permitted occupants of the Lands or Facility or occasioned wholly or in part by any act or omission of the Landlord, its officers, employees, agents, contractors, invitees or licensees 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 to the Landlord 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) 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;
- (d) a trustee, receiver, receiver/manager, or a Person acting in a similar capacity is appointed with respect to the business or assets of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a Transfer approved by the Landlord;

- (f) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within thirty (30) days after the date of such taking; or
- (g) any insurance policy covering any part of the Library Premises is, or is threatened to be (unless Tenant remedies the condition giving rise to threatened cancellation within fifteen (15) days 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**

If and whenever an Event of Default occurs under Section 12.1, then without prejudice to any other rights which it or any other party 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 Library Premises and repossess the Library Premises and, in either case, enjoy them as of its former estate, and any improvements to the Library Premises 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 Library 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 Library Premises as agent of the Tenant and to find another Person to operate the Library Premises and to enter into a new lease for the Library Premises for whatever length, and on such reasonable 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 Library 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 Library Premises; and to apply the proceeds of any such reletting 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 Library 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, excepting for any negligence of the Landlord, then 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 Library Premises.

### **12.3 Costs**

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

## **13. DAMAGE OR DESTRUCTION**

### **13.1 Damage to Library Premises**

- (a) If the Library Premises is at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty required to be insured against by the Tenant pursuant to Section 10.1 or otherwise insured against by the Landlord, and if as a result of such occurrence:
  - (i) the Library Premises is rendered untenable only in part, in the opinion of the Landlord's architect delivered to the parties within sixty (60) days after any damage or destruction, this Lease shall continue in full force and effect and the Tenant shall, subject to Section 13. and 13.1(c) hereof, commence diligently and with reasonable speed thereafter, to reconstruct, rebuild or repair the Library Premises. Rent shall abate proportionately to the portion of the Library Premises rendered untenable from the date of the destruction or damage until the earlier of: (i) ninety (90) days after the Library Premises has been restored and rendered tenable, and (ii) the date the Library Premises is reopened for business; and
  - (ii) the Library Premises is rendered wholly untenable in the opinion of the Landlord's Architect delivered to the parties within sixty (60) days after any damage or destruction, this Lease shall continue in full force and effect and the Tenant shall, subject to Section 13. and 13.1(c) hereof, commence diligently and with reasonable speed

thereafter, to reconstruct, rebuild or repair the Library Premises. Rent shall abate from the date of the destruction or damage until the earlier of: (i) ninety (90) days after the Library Premises has been restored and rendered tenantable, and (ii) the date the Library Premises is reopened for business.

- (b) Notwithstanding anything contained in Section 13.1(a), if the Facility is damaged or destroyed by any cause whatsoever and if, in the opinion of the Landlord's architect delivered to the parties within sixty (60) days after any damage or destruction, the Facility cannot be rebuilt or made fit for the purposes of the Tenant within one hundred and eighty (180) days of the happening of the damage or destruction, the Landlord or the Tenant may, at its option, elect to terminate this Lease by giving to the other, within thirty (30) days after receipt of the architect's opinion, notice of termination and thereupon Rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid up to the date of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Library Premises to the Landlord in accordance with the terms of this Lease. In the event of termination hereunder that portion of the Replacement Reserve Fund including interest earned thereon that has been contributed by the Tenant shall be paid and transferred to the Tenant.
- (c) In each of the foregoing cases, the Landlord agrees that proceeds of insurance shall be made available to the Tenant for the purposes of discharging its obligations hereunder. Any proceeds in excess of the costs actually incurred shall be retained by the Tenant for its own use.

## **14. TRANSFER AND SUBLETTING**

### **14.1 Consent Required**

The Tenant shall not enter into, consent to, or permit any Transfer without prior written consent of the Landlord.

### **14.2 Assignment by Landlord**

The Landlord shall have the unrestricted right to sell, transfer, lease, charge or otherwise dispose of all or any part of its interest in the Lands or any interest of the Landlord in this Lease. In the event of any sale, transfer, lease, charge or other disposition (an "**Assignment**"), to the extent that the assignee from the Landlord agrees with the Landlord to assume the obligations of the Landlord under this Lease, the Landlord shall thereupon and without further agreement be released of all liability under this Lease except to the extent such liability relates to the period prior to the Assignment.

## **15. EXPROPRIATION**

If at any time during the Term, by exercise of any competent authority of powers of expropriation, condemnation or eminent domain, title is taken for all or any part of the

Library Premises or the Facility, both the Landlord and the Tenant shall co-operate with each other so that each may receive the maximum award in the case of any expropriation to which they are expressly entitled in law. If the whole or any part of the Library Premises is expropriated, as between the parties hereto, their respective rights and obligations under this Lease shall continue until the day on which the expropriating authority takes possession thereof. If in the case of partial expropriation of the Library Premises, if this Lease is not frustrated by the operation of the Applicable Laws and such expropriation does not render the Library Premises wholly untenable, the Tenant may elect to restore the part not so taken in accordance with the repair provisions applicable in the event of destruction or damage.

## **16. ARBITRATION**

### **16.1 Application**

The provisions of this section shall apply:

- (a) whenever a party hereto has the ability to refer any matter in this Lease to dispute resolution; or
- (b) whenever any issue arises with respect to the interpretation of this Lease that the applicable parties are unable to resolve;
- (c) any issue which arises relating to the determinations made in the Lifecycle Study; or
- (d) whenever a party breaches or is alleged to have breached its obligations pursuant to this Lease (such situation being hereinafter referred to as the "**Dispute**").

### **16.2 Administrative Review**

In the first instance, a Dispute shall be referred to, as applicable, to the Chief Administrative Officer of the City, and to the Chief Executive Officer/Librarian of the Tenant (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 relevant parties within fifteen (15) Business Days of the reference of the Dispute, then the Dispute may, at the option of any party, be referred to the next stage of the dispute resolution process. If the Reviewers come to a unanimous decision, then the parties agree to be bound by such decision.

### **16.3 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. Each of the other parties shall, within fifteen (15) days after receiving such notice, nominate an arbitrator and, if there are two parties to the Dispute, the two arbitrators shall select a chairman of the arbitral tribunal to act jointly with them; if there are three parties to the Dispute, 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 either party. 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 and the chairman 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 and chairman 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 chairman and 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 arbitrator(s) nominated by the other parties, as applicable, may proceed alone to determine the dispute in such manner and at such time as he, she or they shall think fit and his, her or their decision shall, subject to the provisions hereof, be binding upon the parties. 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 1(b) shall apply, mutatis mutandis;
- (c) 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).

#### **16.4 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 parties or is a lesser form of the relief requested by one of the parties or a combination of the forms of relief requested by the parties. Relief may include, but is not limited to:

- (a) monetary award;



- (b) suspension of rights under this Lease permanently or for a specified period;
- (c) specific order requiring a party to act or refrain from acting.

## **17. GENERAL PROVISIONS**

### **17.1 Survival of Obligations**

The indemnity provisions of this Lease and the Landlord's rights in respect of any failure by the Tenant to perform any of its obligations under this Lease shall remain in full force and effect notwithstanding the expiration or earlier termination of the Term.

### **17.2 Remedies Cumulative**

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

### **17.3 Distress**

All goods and chattels of the Tenant on the Library Premises at any time during the Term shall be subject to distress for Rent in arrears, and the Tenant hereby irrevocably waives and renounces the benefit of any present and future legislation taking away or diminishing the Landlord's right to distrain.

### **17.4 Relationship**

It is expressly agreed between the parties hereto that there is no intention to create a joint venture, partnership or relationship between the parties other than that of landlord, tenant, and independent contractors, notwithstanding any agreement herein or in other ancillary agreements.

### **17.5 Delay**

Except as expressly provided in this Lease, whenever a party hereto is delayed in the fulfillment of any obligations under this Lease (other than the payment of Rent and surrender of the Library Premises on termination) by an unavoidable occurrence which is not the fault of the party delayed in performing such obligation, then the time for fulfillment of such obligation shall be extended during the period in which such circumstances operate to delay the fulfillment of such obligation.

### **17.6 Waiver**

If any party hereto excuses or condones any default by any other of any obligation under this Lease, no waiver of such obligation shall be implied in respect of any continuing or subsequent default.

### 17.7 Notices

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

To the Tenant:

London Public Library  
251 Dundas Street  
London ON  
N6A 6H9  
Fax: 519-663-5396  
Attention: Chief Executive Officer and Librarian

To the Landlord:

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

With copies to:

The Corporation of the City of London  
Suite 1014, City Hall  
300 Dufferin Avenue  
P.O. Box 5035  
London ON  
N6A 4L9  
Fax: 519-661-5530  
Attention: City Solicitor

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 effect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery or by facsimile.

### **17.8 Registration**

Neither the Tenant nor anyone claiming under the Tenant shall register this Lease, any short form or notice hereof, or any Transfer without the prior written consent of the Landlord, not to be unreasonably withheld. The costs of preparation, approval and execution of any such short form, notice or any Transfer hereof shall be borne by the Tenant.

### **17.9 Time of Essence**

Time is of the essence of this Lease.

### **17.10 Applicable Law**

This Lease shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

### **17.11 Severability**

All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any such provision is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in full force and bind the parties as though the illegal and unenforceable provision had never been included in this Lease.

No party is obliged to enforce this Lease to the extent that by so doing they would be contravening any Applicable Laws.

### **17.12 Captions and Section Numbers**

The captions and section numbers appearing in this Lease are inserted as a matter of convenience only and shall in no way limit or affect the interpretation of this Lease.

### **17.13 Successors**

The rights and liabilities created by this Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, excepting only that this Lease shall not enure to the benefit of any of such successors or assignees unless and only to the extent expressly permitted pursuant to the provisions of this Lease.

### **17.14 Interpretation**

The words "hereof", "hereto" and "hereunder" and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as

may be appropriate or required by the context. Any reference to the Tenant includes, where the text allows, the employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant might reasonably be expected to exercise control.

**17.15 Entire Agreement**

This Lease and the Schedules and riders, if any, attached hereto set forth the entire agreement between the Landlord and the Tenant concerning the Library Premises and there are no agreements or understandings between them other than as herein set forth. This Lease, its Schedules and riders may not be modified except by agreement in writing executed by the parties hereto.

**17.16 Receipt of Executed Lease**

Tenant acknowledges receipt of an executed copy of this Lease.

IN WITNESS WHEREOF the parties hereto have executed this lease as of the day and year first above written.

LANDLORD:

**THE CORPORATION OF THE CITY OF LONDON** as trustee 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

Per:

\_\_\_\_\_  
Matt Brown, Mayor

Per:

\_\_\_\_\_  
Catharine Saunders, City Clerk

TENANT:

**LONDON PUBLIC LIBRARY**

Per:

\_\_\_\_\_  
Scott Courtice, Board Chair

Per:

\_\_\_\_\_  
Stuart Clark, Board Vice Chair

**SCHEDULE A**

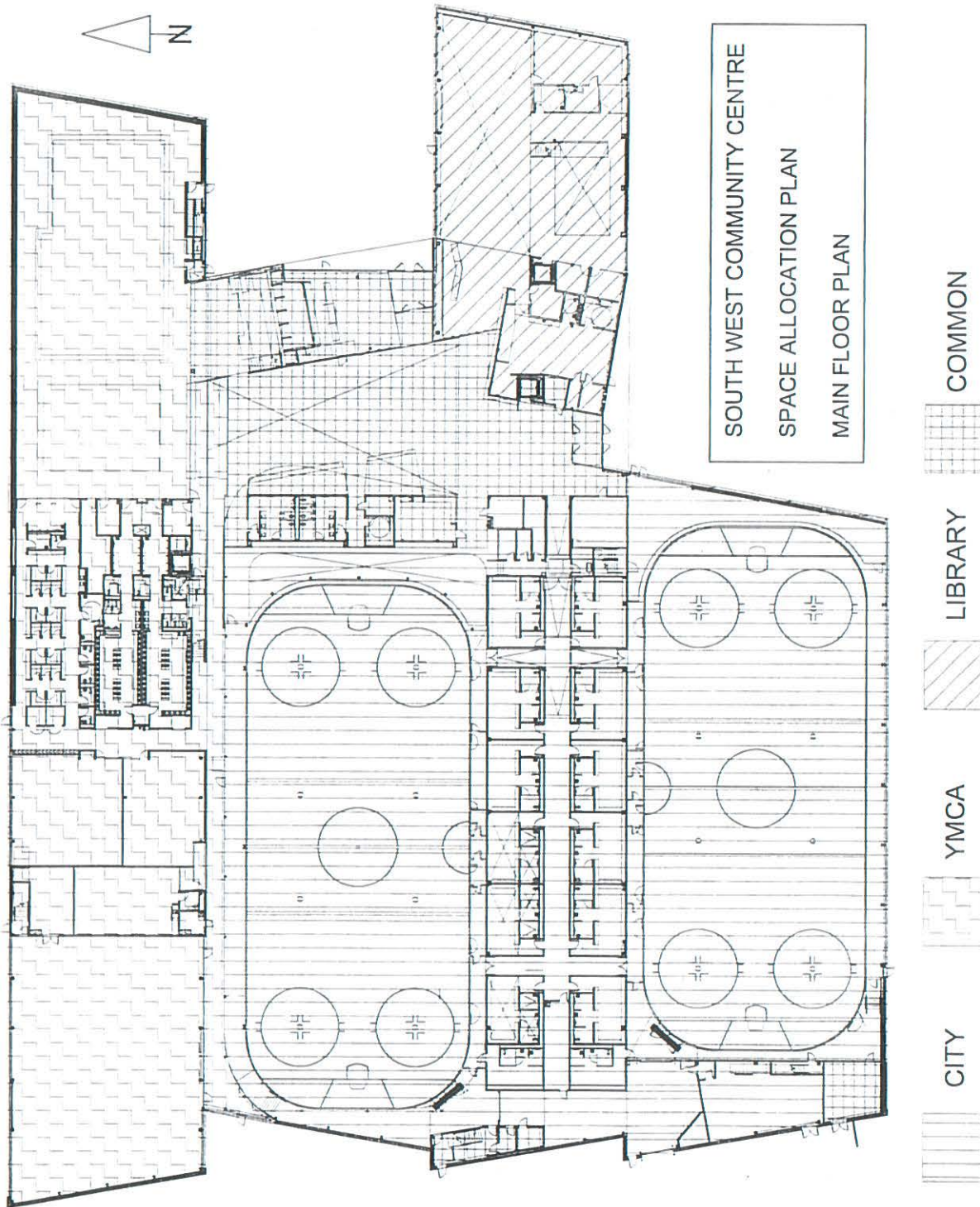
**DESCRIPTION OF LANDS**

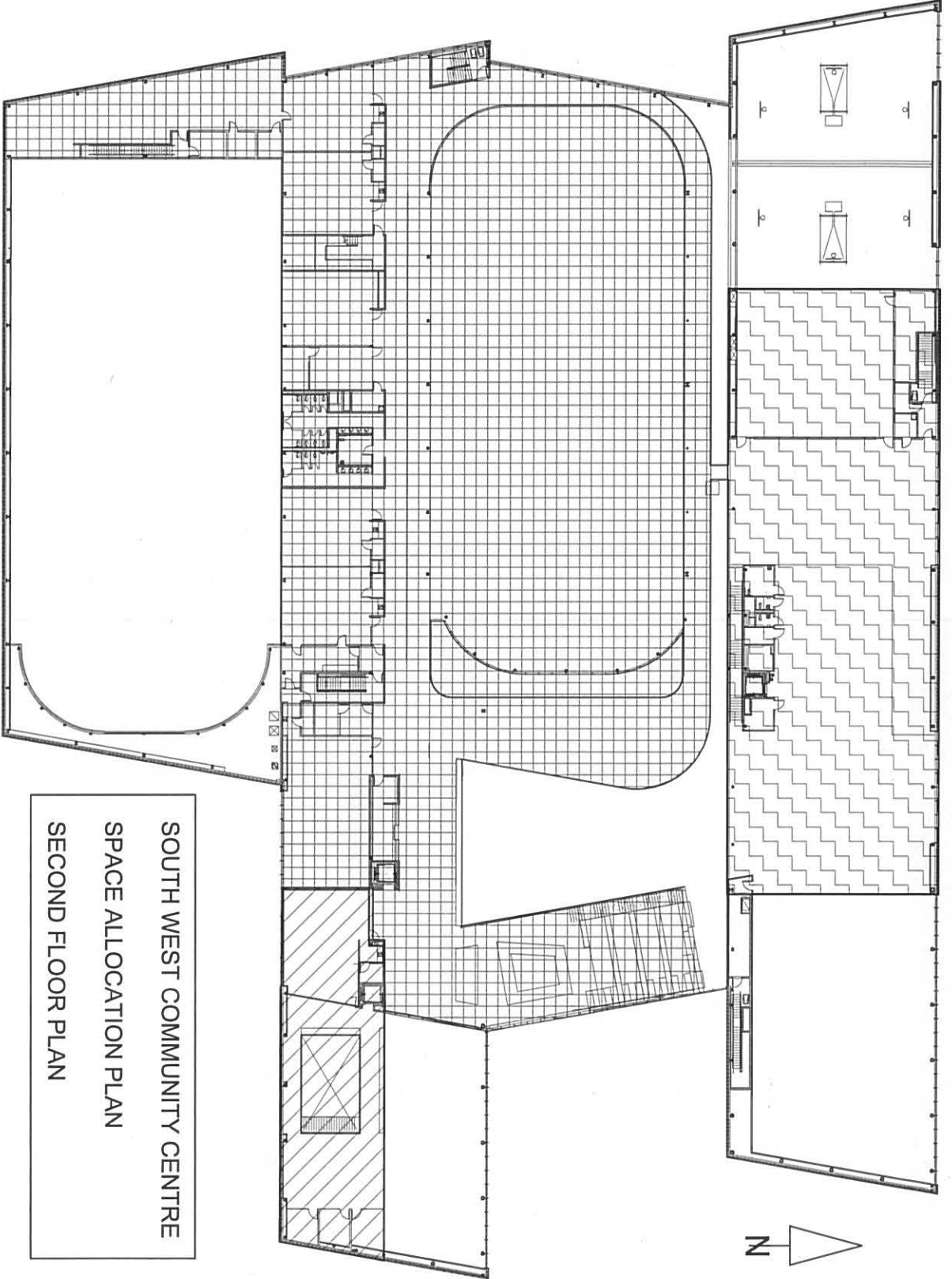
Part Lot 38, Concession 2 (Geographic Township of Westminster), City of London,  
County of Middlesex designated as Parts 1, to 16 inclusive on Plan 33R-119067



SCHEDULE B

DESCRIPTION OF LIBRARY PREMISES

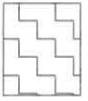




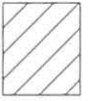
SOUTH WEST COMMUNITY CENTRE  
 SPACE ALLOCATION PLAN  
 SECOND FLOOR PLAN



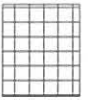
CITY



YMCA



LIBRARY



COMMON





## **SCHEDULE "C"**

### **LIBRARY SHARE OF OPERATING EXPENSES**

The Library shall contribute the following percentages for the Operating Costs to repair and maintain the Common Areas set out below:

- 9% of cost for systems that support the entire building (e.g. boiler plant or window washing)
- 5.8% for common area costs (utilities, cleaning, repair and maintenance)
- 9% for roofing
- 9% for parking (snow removal and repair)
- 9% for exterior landscape and hardscape
- 9% Exterior building face (skin)
- 0% for playgrounds and public art

For any Operating Costs incurred by the YMCA to repair and maintain the Common Areas not specifically addressed above, the parties shall negotiate such contribution of the Tenant. If the Parties cannot agree on the appropriate contribution in any such instance, it will be submitted to the Management Committee, and if agreement is not reached after such submission, shall be subject to the dispute resolution provisions of this Lease.



## SCHEDULE "F"

### PROGRAM SERVICES AND ACCESS AGREEMENT

#### PROGRAM SERVICES AND ACCESS AGREEMENT

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

AMONG:

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

-and-

**YMCA OF WESTERN ONTARIO** (the "YMCA")

-and-

**LONDON PUBLIC LIBRARY** (the "Library")

**WHEREAS** the City, YMCA and the Library have entered into a joint venture agreement for the purpose of building and operating a multi-purpose community centre in the southwest area of London, comprised of an arena, pool, library, gym, multi-purpose rooms, and indoor and outdoor public gathering spaces and amenities (the "Facility");

#### **OVERARCHING PRINCIPLES**

The intent of these overarching principles is to establish a framework for the interpretation and implementation of the terms of this Agreement. Whenever a conflict or dispute arises in relation to the application of this Agreement, the overarching principles will be a reference point for resolution of such conflict or dispute:

- i) Programming, services, and activities at the Premises and at the common areas of the Facility will be delivered and/or supervised by the YMCA, with the exception of Library and City arena programs, services and activities. The YMCA will be the lead organizer for handling public space use, use of space by community groups and informal programming that will occur on the Premises. Nothing in this Program Services and Access Agreement shall be interpreted so as to prevent the YMCA from offering programs and services exclusively to YMCA Members.
- ii) The YMCA, the City and Library will work co-operatively to develop the mix of formal and informal Programs, services and activities for the Premises and the common areas of the Facility which best meet the needs of the community and will consult at least twice annually to adjust the mix of Programs and to share program plans in order to

- iii) The YMCA, the City and the Library will work co-operatively to deliver Programs, services and activities at the Premises in such a way as to avoid competition and/or duplication of efforts.
- iv) The aim of YMCA delivered/supervised Programs hereunder, including recreation programs, services and activities at the Premises, will be to provide a broad spectrum of recreation/sport opportunities and community gathering place activities addressing the needs and interests of residents across broad age, ethnic, gender, and ability demographics. The broad spectrum of services will encompass such aquatics, physical/social/leisure recreation, community activities/celebrations, community rental activities, and passive 'gathering' place activities as may be agreed upon by the YMCA, City and the Library, and that are complementary to those other programs, services and activities delivered at the Facility by the Library and by the City in the arena, and by the YMCA to YMCA Members.
- v) Programs will be delivered according to the Delivery Standards established by this Agreement.
- vi) While it is recognized that the YMCA's success in operating the Facility will be achieved in substantial part by operating within the YMCA's fiscally proven membership model, there will be ongoing and careful discussions between the YMCA and City to maximize the opportunities for 'a la carte' selection of/access to programs and services by members of the public at prices and terms similar to those publicly available at City operated community centres in London. The intent is to offer a variety of ways for the public to affordably access services at the Premises.
- vii) Hours of operation of the Facility will be established by the YMCA in consultation with the City and the Library to manage each party's needs.

**NOW THEREFORE** in consideration of the mutual covenants and agreements between the Parties, the Parties agree as follows:

## **1. INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the terms set forth below shall have the respective meanings ascribed thereto unless otherwise specifically provided:

- (a) **"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;
- (b) **"City"** means the Corporation of the City of London;
- (c) **"City Users"** means City residents who are not YMCA Members and who enroll and take part in Programs;

- (d) **"Committee"** means the working committee established under Section 6.1 of this Agreement;
- (e) **"Council"** means the municipal council of the City of London;
- (f) **"Delivery Standards"** means the delivery standards established from time to time by the Committee in relation to the Programs, which Delivery Standards will, at a minimum, be consistent with Spectrum Programs offered at other City locations, as the same may be augmented or replaced from time to time in accordance with the terms of this Agreement;
- (g) **"Facility"** has the meaning ascribed thereto in the Lease, being the multi-use community facility 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;
- (h) **"Fundamental Breach by the City"** means failure of the City to pay any amounts payable to the YMCA in accordance with the terms hereof;
- (i) **"Fundamental Breach by the YMCA"** means, unless subject to the provisions of Article 9 hereof, an act or omission or a series of acts or omissions on the part of the YMCA which has the effect of preventing the use of the Premises by City Users for a period of more than five (5) consecutive days, or cessation or the threat by the YMCA of cessation of its usual operations at the Premises;
- (j) **"Joint Venture Agreement"** means the Agreement among the Parties creating the Joint Venture associated with the building and operating of the Facility;
- (k) **"Lease"** means the lease entered into between the Joint Venture, and the YMCA which includes the Premises;
- (l) **"Library"** means the London Public Library;
- (m) **"Multi-purpose Rooms"** means the designated multi-purpose rooms located in the Facility;
- (n) **"Parties"** means the City, the YMCA and the Library;
- (o) **"Premises"** means that portion of the Facility that is leased to the YMCA, excluding the Common Areas and those portions of the Facility that are leased by the Library and the City;
- (p) **"Programs"** means aquatics programs, recreation programming, community rentals and public gathering place activities delivered at the Premises and in the common areas of the Facility in accordance with Article 2 of this Agreement. For greater certainty, "Programs" excludes programs offered by any of the Parties in their respective exclusive spaces of the Facility;

- (q) **"Public Gathering and Common Areas"** means an interior or exterior space at the Facility, excluding the space operated by any of the Parties, designed for general public accessibility;
- (r) **"Term"** means the period of time commencing on the date on which the Premises are fully functional for the purposes to which they are intended and ending after a term of 40 years unless otherwise terminated in accordance with this Agreement or the Joint Venture Agreement;
- (s) **"User Fee By-Law"** means the by-law of the City in effect from time to time establishing program and participation fees for pay as you play programs and admissions;
- (t) **"YMCA"** means the YMCA of Western Ontario;
- (u) **"YMCA Members"** mean individuals or families who have contracted with the YMCA for a membership or membership benefits; and
- (v) **"YMCA Premises"** means that that portion of the Facility that is leased to the YMCA.

## 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 Program Services and Access 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) all references to currency herein are references to Canadian currency;
- (d) 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;
- (e) words importing the masculine gender include feminine, neuter, unspecified or trans gender and words in the singular include the plural and vice versa;
- (f) 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.

### **1.3 Overarching Principles**

The overarching principles enumerated at the beginning of this Agreement are incorporated into and shall form part of this Agreement for the purposes of interpretation of the intent of this Agreement.

### **1.4 Schedules**

The following schedules are incorporated into and shall form part of this Agreement

Schedule "A" Programs and Scheduling

Schedule "B" Day Passes

## **2. PROGRAMS**

### **2.1 Operation of Programs**

During the Term of this Agreement, the YMCA shall offer Programs in accordance with the Delivery Standards. Schedule A hereto outlines the Programs and numbers of sessions to be offered by the YMCA. Program description, content, instructor/participant ratio, instructor qualifications and certifications, class size, fees, evaluations and associated Delivery Standards are to be consistent with Spectrum Programs offered at other City locations. All personnel delivering the Programs will be hired, trained, managed and paid as employees of the YMCA. All equipment and supplies required for the delivery of Programs will be provided by the YMCA at its expense. The Library and the City expressly agree that programs offered by them will be unique and not compete with those offered by the YMCA. In particular, the Library and City agree that programs offered by them should avoid any adult, older adult and family programs with a physical fitness, sport or active wellness component. For greater certainty, any of such activities, such as dance and sport development programs, that are negotiated for inclusion as Programs in the semi-annual meetings of the Committee are excluded from the provision not to compete with programs offered by the YMCA.

### **2.2 Changes to Programs**

In accordance with the Overarching Principles the City, the Library, and the YMCA will work co-operatively to achieve the mix of Programs and scheduling of Programs which best meets the needs of the community. If, during the Term, the Parties wish to make changes to Programs including modifications to existing Programs, elimination of Programs, additions to Programs or modifications to the Delivery Standards (a "Change"), the party proposing the Change shall first refer the Change to the Committee. The Committee will then determine what, if any, operational changes are necessitated to accommodate the Change and what, if any, modification to the User Fee By-Law is required. Any Change adopted by the Committee shall be reduced to writing and shall be attached to and form part of this Agreement. Where a Change would require a modification to the User Fee By-Law, such Change shall be subject to approval by Council.

### 2.3 Usage

The Parties agree that up to Fifty (50%) percent of the spots in the shared aquatics and Spectrum-type Programs will be reserved for City User registrants. In order to ensure that this percentage is adhered to it is understood that the calculation of the participation by City Users is to be conducted proportionately across the scope of Program offerings and reflect a mix of times and days offered. For the purposes of assessment, the percentage will be applied across the entire Program type so that any one class may not achieve the percentage but the total collection of classes meets the percentage. In the event that enrollment in a specific Program by City User registrants at any time or times is insufficient to fully utilize the particular Program session or that part of the Facility designated for delivery of the Program, the YMCA may enroll additional YMCA members in such Program session or may make use of the unutilized portion of the Premises.

The Parties hereto support the financial viability of the YMCA to perform its obligations under the Lease and be able to provide a return on investment. To this end, if Program attendance and City participation levels at up to fifty (50%) percent do not allow the YMCA to run a financially viable operation as demonstrated by regular financial reporting after year one, the following remedies will be available to the YMCA through negotiation with the City:

- i) A reduction in the participation rate of City Users to as low as thirty-five (35%) percent;
- ii) An operating subsidy from the City to the YMCA to compensate for the difference between actual cost of running the Programs and the user fee charged by the City; or
- iii) A combination of (i) and (ii).

The YMCA and the City agree to monitor performance of the operation and to negotiate in good faith to resolve any revenue shortfalls arising from higher than anticipated City User participation rates and subsidized user rates. If the parties are unable to reach a resolution, the matter will be referred to the dispute resolution provisions in Article 11.

### 2.4 Promotion, Registration and Wait Lists

The City will make available to the YMCA cross promotional space free of charge in various City publications, including Spectrum, and on the City website for the advertisement of the Programs. Through the Committee, the YMCA, the Library and the City will develop strategies for seamless public registration in the Programs. Program registrations conducted by the YMCA, will be on a "first come first served" basis, subject to the provisions of Section 2.3 hereof. The YMCA will maintain and manage wait lists for aquatic programs and Spectrum-type Programming for both City User registrants and YMCA Members for registrations it receives. The City will maintain wait lists for Spectrum-type Programming for any City User registration requests it receives. The City will share its wait lists with the YMCA 7-14 days prior to the start of programs for



the YMCA to manage with a view to maximizing participation in each Program. Any subsequent waitlist will be open to a la carte registrations and YMCA members indiscriminately. The Parties acknowledge that both the Library and the City will offer programs in their own spaces, and the YMCA would not be responsible for registration for these programs.

## **2.5 Reporting of Incidents**

In the event that any City User is injured or property of a City User is damaged while participating in a Program, the YMCA shall document the incident. The YMCA shall seek to resolve any complaints received by the YMCA from City Users in relation to a Program. If any such complaint is made to the City, the YMCA and the City shall work together to seek to resolve such complaint. The YMCA will be responsible for the reporting and documenting of any injury or incident which occurs during a Program, as well as in the public spaces of the Facility including the lobby area, teaching kitchen and parking lot. The City's Arena staff and Library staff will be responsible for documenting and reporting any incidents or injuries which occur in those spaces.

## **2.6 Rules and Regulations**

The YMCA shall have the right to enact and enforce reasonable rules and regulations for Program participants and others attending at the Premises. The YMCA reserves the right to eject or expel from the Premises or ban entry to the Premises by any person or group whose member(s) cause or carry out any acts of vandalism or destruction or behave in a manner that is not appropriate in a community recreational facility. The Parties agree to designate the Southwest Community Centre as a Rzone Facility and will enforce and follow the guidelines of that policy as referenced by City of London RZone Policy A-6953-154 as long as that policy continues to reflect the Parties' vision and standards. Rzone is first and foremost, a proactive education and awareness strategy to promote respectful and responsible behaviour at recreation facilities. The Rzone program applies to all community organizations and individuals using City of London recreational facilities, parks, and programs. The YMCA will continue to use their own reporting and investigation tools for the Premises.

## **3. RATES**

### **3.1 Program Rates**

The City agrees to pay the YMCA for each City User of a Program at the rates established from time to time by the User Fee By-Law for other similar programs operated in the City, or as otherwise specified herein. For greater certainty, the YMCA will determine its membership programs and fees, which will not be subject to the User Fee By-Law or any other approval of Council. The City and the YMCA agree that the YMCA may offer their membership a discounted rate for certain Programs in order to encourage registration and ensure operating costs are covered.

Through discussion and mutual agreement, the YMCA and City may identify recreation programs that are desirable to be offered free of charge to the public.

To promote frequent use of the Premises, daily drop-in swim fees will be available in packages of not less than 10 at the City approved user fee as determined by the City in the fall of each year during the Term of this Agreement. Access only to the change rooms and the activity desired will be permitted through this methodology.

### **3.2 Program Payment**

The City will remit to the YMCA Program fees for each City User who registers for a Program, together with supporting documentation, semi-annually. Program fees that are collected by the YMCA will be retained by the YMCA, with supporting documentation to be remitted by the YMCA to the City semi-annually. For greater certainty only, the YMCA shall be solely responsible for billing and collecting from the YMCA Members.

## **4. MULTI-PURPOSE ROOMS**

### **4.1 Community Rentals of Multi-Purpose Rooms**

Multi-purpose Rooms, Meeting Rooms, and Teaching Kitchen shall be made available to the City and to the Library on such basis as the City, the Library, and the YMCA may, from time to time, agree. YMCA use of the Multi-purpose Rooms, for delivery of the Programs or otherwise, shall take priority. Subject to use by the City, the Library and the YMCA, community users shall be entitled to rent the Multi-purpose Rooms and Meeting Rooms, on reasonable terms and conditions established by the YMCA in consultation with the City and the Library, consistent with the terms of this Agreement. The YMCA will manage all bookings and rentals of the Multi-purpose Rooms, Meetings Rooms and Teaching Kitchen. The Library will manage bookings and rentals for the meeting rooms located in the Library space.

### **4.2 Rates and Payment for Community Rentals of Multi-Purpose Rooms**

Rates for City or Library use of the Multi-purpose Rooms and Meeting Rooms shall be established by the Parties at such time as the basis for availability contemplated in Section 4.1 is established. Payment terms for City or Library use of the Multi-purpose Rooms and Meeting Rooms shall be within thirty (30) days after use. With respect to rentals of the Multi-purpose Rooms by community users, the YMCA shall conform to the City's pricing as established through the City's annually approved User Fee Detail Report, and shall bill, upon such payment terms as determined by the YMCA and City from time to time, the said users at the time of use, or as otherwise determined by the YMCA in any specific circumstances.

### **4.3 Public Gathering and Common Area Spaces**

The YMCA agrees to permit reasonable public access to Public Gathering and Common Areas for activities ranging from passive recreation/leisure activities (e.g. reading, conversing, playing cards or board games) to community celebrations or community group events (e.g. registrations for community sport groups) during all regular operating

hours of the Premises. Requests for use will be made to the YMCA and the YMCA will coordinate the use of the public space for community groups and events. The YMCA will communicate and share information about public space use to the Parties as such use may impact the Parties.

## **5. DAY PASSES**

The Premises has multiple participation areas (gymnasium, fitness centre, pool) and a wide breadth of drop-in Programs. The YMCA will offer at the Premises multiple methods for accessing drop-in Programs, as specified in Schedule "B".

## **6. WORKING COMMITTEE**

### **6.1 Composition**

A working committee shall be established consisting of an equal number of representatives of each of the Parties hereto, at least one of whom representing each party shall be senior member of their respective administrations. The City shall provide representatives from both Neighbourhood and Children's Services and Parks and Recreation Service Areas.

### **6.2 Terms of Reference**

The Committee shall be responsible for monitoring the array and delivery of Programs, activities and events and establishing the Delivery Standards in compliance with the terms of this Agreement. The Committee shall also have responsibility for dealing with the resolution of Changes pursuant to Section 2.2 and resolution of Disputes in accordance with Section 10.1.

### **6.3 Committee Meetings**

The meetings of the Committee shall take place on fixed dates as determined by the Committee, and from time to time for specific reasons at the call of one its members by telephone, facsimile or email notice to the other members no later than seventy-two (72) hours before the time fixed for the meeting. In urgent cases, meetings may be held by telephone conference call on notice received by the members no later than twelve (12) hours before the time fixed for the meeting. Meetings shall take place at the offices of the City, the YMCA, or the Library, or at the Facility, unless the members of the Committee agree otherwise in any instance. The Committee may upon consensus agree to any other means of convening its meetings. Any Party hereto may change its representatives on the Committee by notice to the other Parties as provided in this Agreement. Quorum for a meeting of the Committee shall include at least one representative of each of the Parties that is delegated authority to represent that Party. As necessary, any member may participate in a meeting of the Committee by telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a Committee member participating in the meeting by those means is deemed to be present at the meeting. A YMCA representative will chair these meetings.

## **6.4 Public Input**

The Committee shall establish a mechanism for engaging public input which shall provide a forum for input by various users of the Facility. The YMCA, as operator, shall implement and coordinate a general visitor input mechanisms in addition to surveying their members and will share the input received with the Committee as relevant. The City and the Library will similarly gather input from their respective users and share the information amongst the Parties as relevant. The YMCA will implement, where appropriate or as directed by the Committee, suggestions arising from the public input.

## **7. COMPLIANCE WITH POLICIES**

### **7.1 Policies**

For City User access to Programs and rentals of the Multi-purpose Rooms and Meeting Rooms the YMCA will adopt all City policies including those regarding: participation, gender expression/identity; gender fairness in recreation services; program integration and accessibility; financial assistance; child age specification; non-residents; play with the right attitude; Program cancellation; transfers; withdraw and refund; use of photographic devices; and everyone's health and welfare.

### **7.2 Indemnification**

The YMCA acknowledges that the City and the Library are entering into this Agreement only for the purpose of making the Programs available to City Users and that neither the City nor the Library will be involved, other than in an advisory capacity, pursuant to this Agreement in the operation of the Premises or common areas of the Facility. Accordingly, the YMCA shall indemnify and save harmless the City and the Library from and against any and all claims, actions, damages, losses and liabilities and expenses (including, without limitation bodily injury including death, personal injury and property damage) arising from or out of the occupancy or operation by the YMCA of the Premises or occasioned wholly or in part by any act or omission of the YMCA, its officers, employees, agents, contractors, invitees or licensees at the Facility or the property upon which it sits, or due to or arising out of any breach by the YMCA of this Agreement, except to the extent contributed to by the City or the Library, its councillors, employees, agents, contractors, invitees or licensees. Correspondingly, the Library shall indemnify and save harmless the YMCA and the City from and against any and all claims, actions, damages, losses and liabilities and expenses (including, without limitation bodily injury including death, personal injury and property damage) arising from or out of the occupancy or operation by the Library of a branch library in the Facility, and the City shall indemnify and save harmless the YMCA and the Library from and against any and all claims, actions, damages, losses and liabilities and expenses (including, without limitation bodily injury including death, personal injury and property damage) arising from or out of the occupancy or operation of the Arena and Service London space in the Facility, or occasioned wholly or in part by any act or omission of the City or the Library, or any of their respective councillors, officers, employees, agents, contractors, invitees or licensees at the Facility or the property upon which it sits, or due to or arising out of any breach by the City or the Library of this Agreement,

except to the extent contributed to by the YMCA, its officers, employees, agents, contractors, invitees or licensees.

## **8. FORCE MAJEURE**

In the event that the Premises is incapable of being used by City Users as a result of an act or event beyond the control of the YMCA (such as act of nature, utilities failure or some similar event), then the City, the Library, and the YMCA shall work cooperatively in an effort to minimize disruption to the Program schedules and to arrange alternative time to be made available for the purposes of replacing lost time. During any such interruption, the City will not be required to pay any Program or other fees to the extent that they are not otherwise recoverable within the Premises.

## **9. DEFAULT**

### **9.1 Default other than Fundamental Breach**

A default of the obligations of the YMCA, the City or the Library under this Agreement (other than a Fundamental Breach) shall, failing settlement by the Parties, be referred to the dispute resolution provisions of this Agreement. For clarity, a default by the YMCA under its obligations under the Lease shall be deemed to be a default under this Agreement and similarly a Fundamental Breach by the YMCA of its obligations herein shall be deemed a default under the Lease.

### **9.2 Fundamental Breach by the YMCA**

In the event that a Fundamental Breach by the YMCA occurs:

- (a) the City may invoke the provisions of this section of the Agreement by notice in writing delivered to the YMCA. The notice shall set out the nature of the Fundamental Breach by the YMCA and shall specify the date (the "Effective Date") on which the provisions of this section shall have effect, which date shall not be less than five (5) Business Days following the delivery of the notice;
- (b) if the YMCA remedies the Fundamental Breach by the YMCA prior to the Effective Date then the provisions of this section of the Agreement shall not become effective, provided that should a Fundamental Breach by the YMCA, which is of the same nature as that originally complained of occur, within twelve (12) weeks of the giving of the original notice, the City may invoke the provisions of this section of the Agreement which shall have effect immediately upon the giving of the second notice or as specified in the second notice;
- (c) from and after the Effective Date, in addition to any other rights and remedies it may have hereunder or at law, the City shall be entitled at its option to terminate this Agreement and exercise its rights under Section 12.2(b) of the Joint Venture Agreement, in which event this Agreement will be immediately terminated, but the parties hereto will continue to be bound by the applicable provisions regarding the Programs until any Programs commenced prior to such termination

have been completed, with application to and during the duration of each such Program;

- (d) the YMCA hereby irrevocably appoints the City to act as attorney for and on behalf of the YMCA to execute such documents as may be required to give effect to the provisions of this section, once invoked and effective, to the extent that the YMCA refuses or delays execution and delivery of any such documents.

### **9.3 City may Remedy Breach**

Any breach by the YMCA of its obligations determined pursuant to the provisions of Section 10 or any Fundamental Breach by the YMCA may, at the option of the City and in addition to any rights or remedies of the City in respect thereof, be remedied by the City. All expenses incurred and expenditures made by or on behalf of the City shall be forthwith paid by the YMCA and if the YMCA fails to pay the same, the City may deduct such amount from the rates otherwise due and owing by the City to the YMCA.

### **9.4 Fundamental Breach by the City**

In the event that a Fundamental Breach by the City occurs:

- (a) the YMCA may invoke the provisions of this section of the Agreement by notice in writing delivered to the City. The notice shall set out the nature of the Fundamental Breach by the City and shall specify the date (the "Effective Date") on which the provisions of this section shall have effect, which date shall not be less than five (5) Business Days following the delivery of the notice;
- (b) if the City remedies the Fundamental Breach by the City prior to the Effective Date then the provisions of this section of the Agreement shall not become effective, provided that should a Fundamental Breach by the City, which is of the same nature as that originally complained of occur, within twelve (12) weeks of the giving of the original notice, the YMCA may invoke the provisions of this section of the Agreement which shall have effect immediately upon the giving of the second notice or as specified in the second notice;
- (c) from and after the Effective Date, in addition to any other rights and remedies it may have hereunder or at law, the YMCA shall be entitled at its option to terminate this Agreement, in which event this Agreement will be immediately terminated, but the parties hereto will continue to be bound by the applicable provisions regarding the Programs until any Programs commenced prior to such termination have been completed, with application to and during the duration of each such Program;
- (d) to the extent that the YMCA exercises its termination right pursuant to Section 9(d)(iii), it shall also be entitled, at any time upon not less than ninety (90) days' notice in writing to the City, the Library and the Joint Venture to terminate the Lease and invoke the provisions of Article 13 of the Joint Venture Agreement between the City and the YMCA;

- (e) the City hereby irrevocably appoints the YMCA to act as attorney for and on behalf of the City to execute such documents as may be required to give effect to the provisions of this section, once invoked and effective, to the extent that the City refuses or delays execution and delivery of any such documents.

## **10. DISPUTE RESOLUTION**

### **10.1 Application**

The provisions of this section shall apply:

- a. whenever any issue arises with respect to the interpretation of this Agreement that is not resolved in a manner or time frame acceptable to any Party; or
- b. whenever a Party breaches or is alleged to have breached its obligations pursuant to this Agreement; or
- c. whenever a matter is subject to agreement between the Parties and the Parties are unable to agree;

such situation being hereinafter referred to as the "Dispute".

### **10.2 Administrative Review**

In the first instance, the Dispute shall be referred to the Committee, the members of which shall review the Dispute and such evidence as they deem appropriate. If the Committee is unable to come to a resolution that is satisfactory to each of the Parties within fifteen (15) Business Days of the reference of the Dispute, then the Dispute may, at the option of any Party, be referred to the next stage of the dispute resolution process. If the Committee comes to a unanimous decision, then the Parties hereto agree to be bound by such decision.

### **10.3 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 Party. 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 Parties 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 Party, 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 Party. 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 fifteen (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).



#### **10.4 Condition Precedent.**

Submission to arbitration pursuant to the provisions of this Article 10 shall be a condition precedent to the bringing of any action with respect to this Agreement.

#### **10.5 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 Parties or is a lesser form of the relief requested by one of the Parties or a combination of the forms of relief requested by the Parties. Relief may include, but is not limited to:

- (a) monetary award;
- (b) suspension of rights under this Agreement permanently or for a specified period; or
- (c) specific order requiring a Party to act or refrain from acting.

### **11. GENERAL**

#### **11.1 Further Assurances**

Each of the Parties 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.

#### **11.2 Time of the Essence**

Time shall be of the essence of this Agreement.

#### **11.3 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.

#### **11.4 Benefit of the Agreement**

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

#### **11.5 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.

#### 11.6 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 both of 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 specific breach waived.

#### 11.7 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.

### 11.8 Governing Law

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

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

#### **THE CORPORATION OF THE CITY OF LONDON**

Per: \_\_\_\_\_

Name: Matt Brown, Mayor

Per: \_\_\_\_\_

Name: Catharine Saunders, City Clerk

#### **YMCA OF WESTERN ONTARIO**

Per: \_\_\_\_\_

Name: Andrew Lockie, Chief Executive Officer

#### **LONDON PUBLIC LIBRARY**

Per: \_\_\_\_\_

Name: Scott Courtice, Board Chair

Per: \_\_\_\_\_

Name: Stuart Clark, Board Vice Chair

**SCHEDULE A**

**PROGRAMS AND SCHEDULING**

**A. AQUATIC- PROGRAMMING**

The YMCA agrees to offer to City Users aquatic programming which conforms to the standards established by the Life Saving Society program. The YMCA further agrees to conform to governing health regulations for public pools and adopt National Lifeguard Standards for service delivery.

The YMCA will offer up to 1,800 person spots for City Users each year in aquatic swimming instruction hereunder.

Program	Group	Season	No. of Session	Classes/d ay Hrs. /
Swimming Instruction	Pre-School	Fall	2	3
		Winter	2	3
		Spring	1	3
		Summer	4 -2 week	12-14
	Learn to Swim Levels 1-10	Fall	2	15
		Winter	2	15
		Spring	1	15
		Summer	4- 2 week	12-14
Recreational Swims	Fitness	Yearly		20hrs /week
	Recreational	Yearly		15hrs/week
Leadership	Bronze Medallion and Cross base			

## B. COMMUNITY RECREATION PROGRAMING

- The YMCA agrees to offer Spectrum-type Programming in the Facility as follows:

1) A broad array of **community “Spectrum-type” registered program activities** including gym, multi-purpose and kitchen based programs open to the general public at City established rates in the proportions of City User to YMCA Member of 50%/50% as outlined in 2.3 of the Program Services and Access Agreement. YMCA Members will be offered some programs at a discounted rate as part of their membership package.

“Spectrum-type” registered program activities to include, for example:

- Parent/Tot Activities – 6-8hrs/wk – weekday/weekend
- Adult Music/Arts/hobbies - 2hrs/wk – evening/weekend
- Kids Music - 2hrs/wk – evening/weekend
- Teen Cooking - 3hrs/wk – evening/weekend
- Adult Cooking - 3hrs/wk – evening/weekend
- Adult Art – 4-6hrs/wk – evening/weekend
- Kids Art - 2hrs/week – evening/weekend
- Adult Language - 4hrs/week– evening/weekend
- Kids Drama - 4hrs/wk - evening/weekend
- Kids Cooking - 3hrs/wk – evening/weekend
- Older Adult Dance - 4-6hrs/wk - weekday daytime
- Youth Leadership - 2hrs/wk – evening/weekend
- Adult Self Defense - 2hrs/wk – evening/weekend
- Sport Development programs – based on demand
- Senior Lunch/Social - 8hrs/wk - weekday 11am-3pm (mix of programming to include one food based Seniors program per week and the City will work with the YMCA to ensure the program is cost neutral to the YMCA)
- Kids Movement programs- 2 hrs/wk- evening/weekend

The following principles will apply when scheduling Community Recreation (Spectrum-type) programming at the Facility:

- The YMCA agrees to maximize child programming to the greatest benefit and will expand opportunities for youth in particular in the after school hours between 3:00 and 6:00 p.m.
- Programs will be offered at times consistent with other Spectrum program offering at other community facilities.
  - o Program times will vary throughout the week in order to offer a range of opportunities to access programming.
- The YMCA will select Programming in consultation with representatives of the City on at least a twice annually basis

prior to publication deadlines of program offerings in the City's Spectrum,

- o The consultation will review program trends and identify gaps and determine changes to the programming mix to be offered.

### **C. PROGRAMS AVAILABLE UNDER YMCA MEMBERSHIP/DROP IN MODEL**

The YMCA and City agree that the following activities will be made available at the Facility, accessible via the YMCA's membership and drop-in fee rates.

- Camp Programs will be offered during the summer, at Christmas, during March Break and PA Days under the YMCA camp model and terms of access.
- After School Drop In
- Youth/Adult Drop In
- Family Drop In
- Parent/Tot Activities
- Adult Fitness
- Older Adult Fitness
- Statutory Holiday Programming

### **D. COMMUNITY ACCESS AND RENTAL OPPORTUNITIES**

The City, the YMCA and the Library agree on the importance of allowing community access to the Premises in the form of rental of spaces (including the potential of free access) and/or the use of Public Gathering and Common Areas spaces both inside and outside, for such purposes as, for example, but not limited to: community festivals, community group/organization meetings and functions, public meetings and public information sessions.

The City, the YMCA and the Library acknowledge the need to balance community access to the Premises with the desire to maximize participation in organized/provided recreation program activities. As a starting point, community access through rentals will be made available as follows:

- Rentals 3000 sq.ft. (Multipurpose/Kitchen) 12hrs/wk - weekend
- Rentals 1500 sq. ft. (Multipurpose) 24hrs/wk - weekend

A diverse range of times will be made available to ensure all parties are accommodated. Community access will be given at a variety of times throughout the week including some availability during prime time hours (Monday-Friday 5pm-9pm, Saturday-Sunday 9am-1pm).

Community Access/rentals usage will be monitored over time to provide information for ongoing discussions about the appropriate balance.

## **E. PUBLIC ACCESS TO PUBLIC GATHERING AND COMMON AREAS, INDOORS AND OUTDOORS**

The City, the YMCA and the Library agree on the importance of public access (individuals or groups) to the Public Gathering and Common Areas of the Facility and the YMCA will permit such access as follows:

- Lobby/Social Spaces - All Hours of regular operation
- Outdoor gathering spaces - all hours of regular operation

The City, the YMCA and the Library acknowledge that the range of activities for individuals in Public Gathering and Common Area spaces in and around the Facility may cover a broad range of activities from passive individual or small group leisure pursuits to larger events and celebrations and may include both unstructured and structured activities. The YMCA will manage and oversee public spaces. Community gatherings in public spaces should be cost neutral to the YMCA and fee recovery will be based on City subsidy and group fees.

## **SCHEDULE B**

### **DAY PASSES**

To promote frequent use of the Premises, daily drop-in swim fees will be available on packages of not less than 10 at a rate of 10 times the City approved user fee for single admission or as determined by the City in the fall of each year. Access only to change rooms and the activities desired will be permitted through this methodology.

The 2016 fee schedule for swim drop-ins shall be:

Child admission \$4.00	10 swim package \$27.50
Adult admission \$5.75	10 Swim package \$51.75
Family \$14.00	no 10 swim packages for this category



**SCHEDULE "G"**

**CAPITAL BUDGET**

Construction Costs (includes public art fees)	\$51,065,965
Land costs (includes land acquisition and closing costs)	\$ 2,800,000
	-----
Total Capital Budget	\$53,865,965

Note: the Capital Budget does not include furniture and equipment costs  
Estimated at:

City	\$300,000
YMCA	\$1,200,000

