

TO:	CHAIR AND MEMBERS CORPORATE SERVICE COMMITTEE MEETING ON APRIL 2, 2019
FROM:	DAVID G. MOUNTEER ASSISTANT CITY SOLICITOR
SUBJECT:	JOINT USE AND MAINTENANCE AGREEMENT, WESTMINSTER PONDS

RECOMMENDATION

That, on the recommendation of the Assistant City Solicitor the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting on April 9, 2019, to authorize an Agreement among the Corporation of the City of London, London Health Sciences Centre, St. Joseph's Health Care, London and Reforest London substantially in the form attached and to the satisfaction of the City Solicitor, and the Mayor and the City Clerk **BE AUTHORIZED** to execute the said Agreement;

BACKGROUND

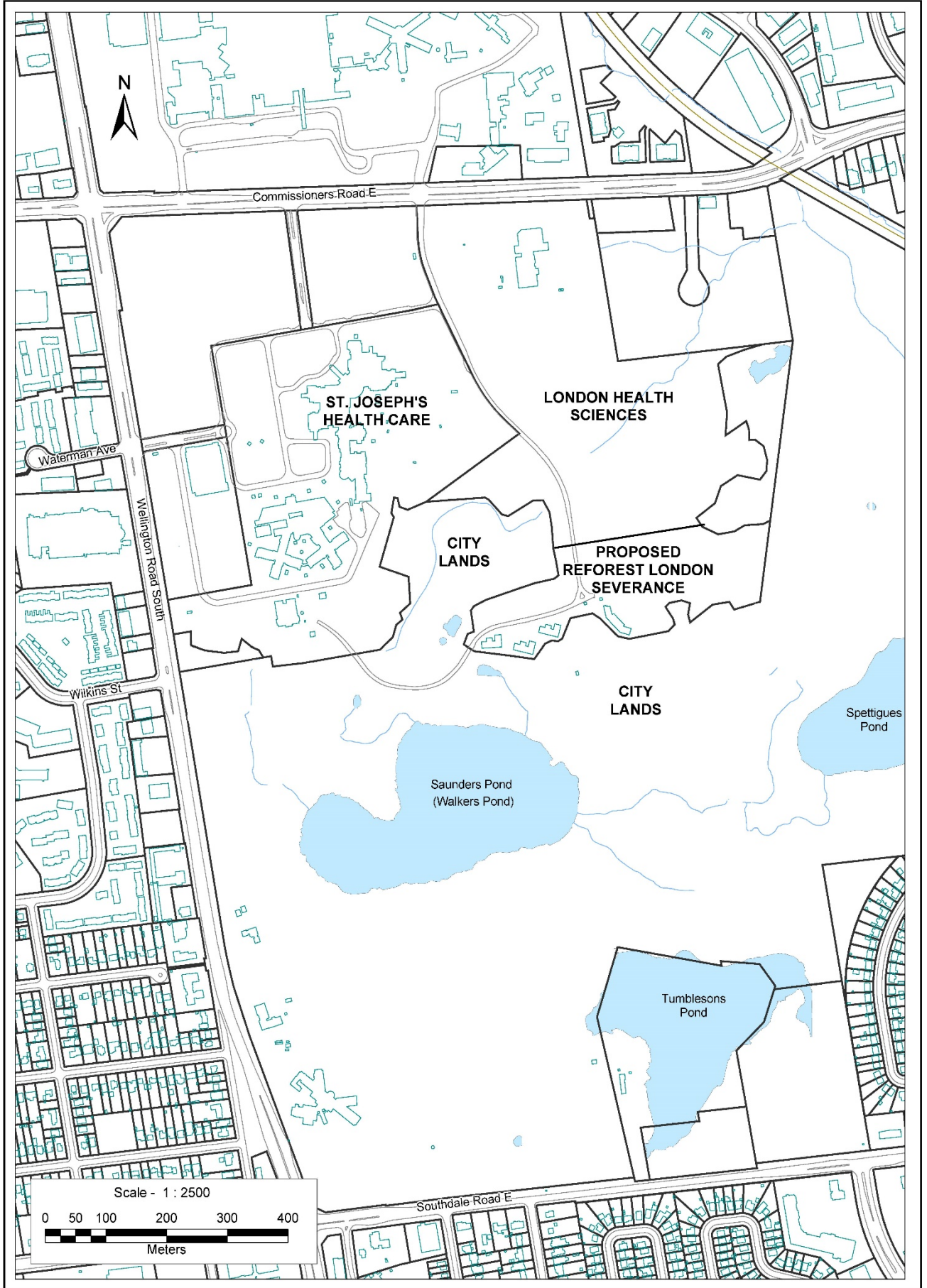
At its meeting on August 3, 2004 Municipal Council approved a tri-party joint use and maintenance agreement with London Health Sciences Centre (LHSC) and St. Joseph's Health Care, London (St. Joe's). The Agreement provided for capital improvements, cost sharing and maintenance of the services associated with the Westminster Ponds Outdoor Education Centre, including related mutual easements for access and servicing. The tri-party Agreement was a precondition of the acquisition by the City of the Westminster Ponds site from LHSC. Following signing of the agreement, the land was transferred to the City.

In May of 2018 LHSC agreed to transfer a portion of its property in the vicinity of the Westminster Ponds to Reforest London as shown on the attached plan, and received a provisional consent under section 53 of the *Planning Act*. A condition of the provisional consent was that the tri-party agreement be updated to include Reforest London as a party and to provide for additional easements and cost sharing. The condition must be satisfied by May 3, 2019. The parties have negotiated the attached four-party agreement which among other things simplifies the easements, cost sharing and maintenance obligations of the parties. The City's rights and responsibilities are not changing.

Approval of the four-party agreement is recommended.

SUBMITTED AND RECOMMENDED BY:
DAVID G. MOUNTEER, ASSISTANT CITY SOLICITOR

c.c. A. Macpherson, Manager Parks Planning & Operations



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Bill No.

By-law No.

A By-law to authorize an Agreement among The Corporation of the City of London, London Health Sciences Centre, St. Joe’s Health Care, London, and Reforest London, and to authorize the Mayor and City Clerk to execute the Agreement.

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

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the “City”) to enter into an Agreement with London Health Sciences Centre, St. Joe’s Health Care, London, and Reforest London (the “Agreement”);

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

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

1. The Agreement attached as Schedule “A” to this By-law, being an Agreement among the City, London and London Health Sciences Centre, St. Joe’s Health Care, London, and Reforest London is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council April , 2019

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading –
Third reading –

SCHEDULE "A"**AMENDED AND RESTATED JOINT USE AND MAINTENANCE AGREEMENT**

This Agreement is dated _____, 2019, among:

THE CORPORATION OF THE CITY LONDON,
(hereinafter called the "City")

and

LONDON HEALTH SCIENCES CENTRE,
(hereinafter called "LHSC")

and

ST. JOSEPH'S HEALTH CARE, LONDON,
(hereinafter called "SJHC")

and

REFOREST LONDON,
(hereinafter called "RFL")

RECITALS

A. The City, LHSC and SJHC entered into a Three Party Joint Use and Maintenance Agreement dated August 23, 2004 (the "**Prior Agreement**").

B. LHSC has agreed to transfer a portion of the LHSC Lands to RFL.

C. Western Counties Road and the Shared Services are intended to be for the mutual use and benefit of the owners from time to time of the City Lands, the LHSC Lands, the SJHC Lands and the RFL Lands and their respective successors, assigns, employees, agents, tenants, guests and invitees.

D. This Agreement is entered into to amend and restate the Prior Agreement and to define the mutual rights of use and obligations related to Western Counties Road and the Shared Easements.

NOW THEREFORE, FOR VALUE RECEIVED, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION**Section 1.1 Definitions**

In this Agreement:

(a) "**Access Reference Plan**" means the Reference Plan of record deposited in the Land Titles Office for the Land Titles Division of Middlesex (No. 33) as Plan 33R-15906 depicting the location of Western Counties Road;

(b) "**Agreement**" means this Amended and Restated Joint Use and Maintenance Agreement and the Schedules attached to this Agreement, all as may be supplemented, amended or restated from time to time, in accordance with the terms of this Agreement;

(c) "**City Lands**" mean Block 1 as shown on the Subdivision Plan as more particularly described in Schedule A hereto;

(d) "**Creditor Party**" means a Property Owner that is owed money as defined in Section 5.1 hereof;

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- (e) **“Defaulting Party”** means a Property Owner that has defaulted in the payment of money as defined in Section 5.1 hereof;
- (f) **“Gas Easements”** mean, in the case of SJHC, the easement granted or to be granted by LHSC to SJHC over the LHSC Lands and in the case of RFL the easement granted or to be granted by LHSC to RFL over the LHSC Lands in each case for the purpose of supplying natural gas to the lands of the respective Property Owners, which shall be registered on title to the respective Property Owners as blanket easements;
- (g) **“Hydro Easements”** mean, in the case of RFL the easement granted or to be granted by LHSC and the City to RFL and in the case of the LHSC, the easements reserved or to be reserved by LHSC over the RFL Lands in each case for the purpose of supplying hydro-electricity to the RFL Lands and the LHSC Lands, which shall be registered on title to the respective Property Owners as blanket easements;
- (h) **“Interest Rate”** means the Prime Rate plus two percent (2%) per annum;
- (i) **“LHSC Lands”** means Part of Lot 23, Concession 1 Designated As Part 7, Plan 33R-12868 and Blocks 3 and 5 as shown on the Subdivision Plan as more particularly described in Schedule A hereto;
- (j) **“Prime Rate”** means the rate of interest per annum established and reported by the Canadian Imperial Bank of Commerce, from time to time, as a reference rate of interest that the Canadian Imperial Bank of Commerce charges to its preferred commercial customers for Canadian dollar loans made by it in Canada;
- (k) **“Property Owners”** mean collectively or individually as the context requires or permits, the City, LHSC, SJHC and RFL and their respective successors and permitted assigns;
- (l) **“Proportionate Share”** means the proportion of the cost of maintaining, operating, repairing and replacing Western Counties Road and the Shared Easements as allocated to the Property Owners in accordance with Section 5.2 of this Agreement, as amended from time to time in accordance herewith;
- (m) **“Sewer Easements”** mean in the case of RFL the easements granted or to be granted by the City, LHSC and SJHC in favour of RFL over the City Lands, the LHSC Lands and the SJHC Lands, in each case for the purpose of providing a sanitary and storm sewers which service the lands of RFL, which shall be registered on title to the respective Property Owners as blanket easements;
- (n) **“Services Expenses”** mean the cost to maintain, operate, repair or replace the Sewer Easements, the Water Easements, the Hydro Easements, the Gas Easements and the Telecommunications Easements but excluding any upgrades to such easements required by a particular Property Owner and excluding where this Agreement provides that a particular service is to be maintained by a particular Property Owner, which shall be registered on title to the respective Property Owners as blanket easements;
- (o) **“Shared Easements”** mean collectively, the Gas Easements, Hydro Easements, Sewer Easements, Telecommunications Easements and the Water Easements except as otherwise specifically provided in this Agreement;
- (p) **“SJHC Lands”** means Blocks 4 and 9 as shown on the Subdivision Plan as more particularly described in Schedule A hereto;
- (q) **“Subdivision Plan”** means Registered Plan No. 33M-501;
- (r) **“Telecommunications Easements”** mean, in the case of the City, the easements granted or to be granted by LHSC in favour of the City over the LHSC Lands; in the case of SJHC, the easements granted or to be granted by LHSC in favour of SJHC over the LHSC Lands and in the case of RFL the easements granted or to be granted by LHSC and the City in favour of RFL over the LHSC Lands and the City Lands, respectively, in each case for the purpose of supplying lines of telecommunications to the lands of the respective Property Owners, which shall be registered on title to the respective Property Owners as blanket easements;

- (s) “**RFL Lands**” mean Parts 1 on Plan 33R-_____ as more particularly described in Schedule A hereto;
- (t) “**Water Easements**” mean, in the case of the City, the easements granted or to be granted by LHSC in favour of the City over the LHSC Lands; in the case of SJHC, the easements granted or to be granted by LHSC in favour of SJHC over the LHSC Lands and in the case of RFL the easements granted or to be granted by LHSC in favour of RFL over the LHSC Lands, in each case for the purpose of supplying water to the lands of the respective Property Owners, which shall be registered on title to the respective Property Owners as blanket easements;
- (u) “**WCR Expense**” means cost to maintain, operate, repair or replace Western Counties Road, including without limiting the generality of the foregoing, charges for the supply of snowplowing and grass cutting.
- (v) “**Western Counties Road**” means the private road situated upon Parts 1, 2, 3 and 4 on the Access Reference Plan;

Section 1.2 Interpretation

Grammatical variations of any terms defined herein have similar meanings; words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders and vice versa. The division of this Agreement into separate Articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The schedules, if any, attached to this Agreement are deemed to form a part of this Agreement.

Section 1.3 Severability

If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision or portion thereof to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 1.4 Governing law

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by the laws of the Province of Ontario. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

Section 1.5 No Partnership

This Agreement does not and shall not be construed to create any partnership or agency or joint venture between the Property Owners whatsoever.

Section 1.6 Prior Agreement

The City, LHSC and SJHC each agree that this Agreement shall replace in total the provisions of the Prior Agreement and to the extent that a party to the Prior Agreement has a claim against another party or parties to the Prior Agreement that claim may be asserted against that party or parties under the terms of this Agreement.

ARTICLE 2 – EASEMENTS AND RIGHTS OF WAY

Section 2.1 Easement over Western Counties Road

LHSC gives and grants to the City, SJHC and RFL a blanket easement and right of way in perpetuity over the LHSC Lands for vehicles and persons for the purpose of ingress and egress to and from the City Lands, the SJHC Lands and the RFL Lands, respectively such easement and right of way to be exercised over the surfaced roadway known as Western Counties Road. LHSC, the City, SJHC and RFL shall each be entitled to the use of Western Counties Road in accordance with the provisions of this Agreement. Western Counties Road shall be maintained in its present location and configuration unless altered by agreement of the Property Owners.

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Section 2.2 Easement over RFL Lands

RFL gives and grants to the City a blanket easement and right of way in perpetuity over the RFL Lands for vehicles and persons for the purpose of ingress and egress to and from the City Lands such easement to be exercised over the existing surfaced roadway from Western Counties Road over the RFL Lands in a southwesterly direction to the City Lands described as Parts ____ on Reference Plan 33R-____. Such roadway shall be maintained in its present location and configuration unless altered by agreement between the City and RFL.

Section 2.3 Walkway Easement over SJHC Lands

SJHC gives an grants to the City and easement and right of way in perpetuity over the SJHC Lands for the purpose of creating and maintaining a walkway from the City Lands over the SJHC Lands to Wellington Road at the sole cost and expense of the City and to be located so as not to interfere with the operations of SJHC on the SJHC Lands.

Section 2.4 Municipal Water Servicing Easement

(a) LHSC grants, conveys and transfers in perpetuity to the City the full, free and uninterrupted right, liberty, privilege and easement to construct, reconstruct, repair, clean, maintain, inspect and use an easement, right of way, and right in the nature of an easement and licence to access maintain, use, operate, repair, replace and inspect the existing watermain located within Parts 1 and 2 on Reference Plan 33R-____ (the “**Municipal Watermain Easement**”).

(b) For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LHSC hereby grants, conveys and transfers to the City all of the right, title and interest of LHSC in and to the watermain lying with the Municipal Watermain Easement. Notwithstanding anything in this Agreement to the contrary, the City hereby assumes all responsibility for the upkeep and maintenance of the watermain within the Municipal Watermain Easement.

Section 2.5 Easement for Access to and Use of Shared Easements

Each Property Owner grants, conveys and transfers in perpetuity to each other Property Owner, to the extent applicable, the full, free and uninterrupted right, liberty, privilege and easement to construct, reconstruct, repair, clean, maintain, inspect and use an easement, right of way, and right in the nature of an easement and license to access, maintain, use, operate, repair, replace and inspect all of the Shared Easements which are located on, in, under, over, along, across or through any part of that Property Owner’s lands and which serve and benefit in whole or in part the other Property Owners together with the full right, liberty, privilege and easement to each of the other Property Owners, respectively and its and their servants, agents, work people, contractors and others designated by it and them, from time to time and at all times forever hereafter, to enter upon the LHSC Lands, City Lands, SJHC Lands or the RFL Lands, as the case may be, with or without tools, machinery, equipment and vehicles, for the purposes aforesaid and to enter as aforesaid upon any adjoining lands in order to obtain access to and from the Shared Easements. The Shared Easements shall be maintained in their present location and configuration unless altered by agreement of the Property Owners. No right granted by this Section 2.5 shall be construed or interpreted to grant or provide for a right of access to any lands for any purpose to be exercised by or enjoyed by, the public.

Section 2.6 Transfer of Private Watermain

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LHSC hereby grants, conveys and transfers to RFL all of the right, title and interest of LHSC in and to the existing private watermain (including the chamber between Harmony Road and Commissioners Road) (the “**Private Watermain**”) lying within the LHSC Lands from the Municipal Watermain Easement to the RFL Lands together with the full, free and uninterrupted right, liberty, privilege and easement to construct, reconstruct, repair, clean, maintain, inspect and use an easement, right of way and right in the nature of an easement and licence to access, maintain, use, operate, repair, replace and inspect the Private Watermain which is located on, in, under, over, along, across or through any part of the LHSC Lands and which serves and benefits in whole or in part the RFL Lands. Notwithstanding anything in this Agreement to the contrary, RFL hereby assumes all responsibility for the maintenance and upkeep of the Private Watermain.

Section 2.7 No Interference

It shall be lawful for the City, SJHC and RFL to exercise and enjoy the rights, liberties and privileges hereby granted without being liable for any interference, loss of use or loss of profit which shall or may be thereby caused to the LHSC Lands or to the owners and occupiers thereof from time to time, and the City, SJHC and RFL shall have the right to cut down or remove any brush, trees, shrubs, fences, pavements, ramps, curbs and other objects as may be necessary or convenient in the exercise of the rights and privileges hereby granted and likewise to excavate and remove the soil and surfacings for the purposes aforesaid.

Section 2.8 Restoration of LHSC Lands

The City, SJHC and RFL covenant and agree with LHSC that in the exercise of the rights herein granted to the City and SJHC they will restore the LHSC Lands, to a condition approximately the condition which existed immediately prior to each and every entry upon the LHSC Lands, excluding the replacement of brush and trees.

Section 2.9 No Buildings to be Constructed on Western Counties Road or the Shared Easements

LHSC agrees to keep Western Counties Road and the Shared Easements clear of all buildings, trees or other structure so as to allow unobstructed use of the easement. The City, SJHC and RFL covenant and agree that no buildings or other structure shall be erected on or over the LHSC Lands forming part of Western Counties Road or the Shared Easements without the written consent of LHSC.

Section 2.10 Planning Act

The provisions of Article 2 are subject to compliance with the subdivision control provisions of the Planning Act (Ontario), as amended from time to time. Compliance with the subdivision control provisions of the Planning Act (Ontario) shall be the obligation of the grantee of the easement to obtain; provided that the cost thereof shall be a Services Expense.

ARTICLE 3 – STANDARDS OF OPERATION AND MAINTENANCE

Section 3.1 Standards of Operation and Maintenance – Western Counties Road

Each of the Property Owners acknowledge and agree that Western Counties Road is a private road that does not and is not intended to conform to the standard or specifications of a public road. Unless otherwise agreed to the contrary by the parties hereto, Western Counties Road is and will be maintained to the standard and specifications of a park road. Each party agrees to maintain at their own expense grass cutting of that part of Western Counties Road which abuts the property owned by such Property Owner.

Section 3.2 Standards of Operation and Maintenance – Shared Easements

All repair, restoration and reconstruction of the Shared Easements shall be effected and performed to the standard existing at the date of this Agreement. To the extent that repairs or replacements which exceed that standard become necessary, the provisions of Section 3.4 shall apply save and except when Section 4.4 is applicable. Except as otherwise agreed by the Parties from time to time, all maintenance, operation, repair or replacement which would result in a WCR Expense or a Service Expense shall, in each case, be effected and performed in accordance with Article 3 by the Party or Parties who are as set out in Section 4.2 responsible for the payment of such expense; and the Parties covenant with each other to effect and perform such maintenance, operation, repair and replacement as required from time to time.

Section 3.3 Performance of Work

(a) All work in connection with the operation, maintenance, repair and replacement of Western Counties Road and the Shared Easements to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner consistent with the standards from time to time established by the City for similar works save and except as otherwise provided in Section 3.1 or Section 3.2 hereof.

(b) In the event that a Property Owner fails to perform its obligations set forth in this Article 3 in a proper and timely manner without reasonable cause, then such Property Owner shall indemnify and save harmless the other Property Owners from any losses, costs or damages incurred by such other Property Owner as a result of such default.

(c) Subject to Section 3.3(a) above, a Property Owner performing the work in relation to Western Counties Road or Shared Easements shall have reasonable discretion with regard to the means of performing the same provided such work is completed expeditiously and it is therefore agreed that the amount of any reasonable cost or expense actually paid or incurred by any Property Owner for any work shall not be challenged by any Property Owner unless such amount shall clearly be demonstrated to be substantially in excess of the reasonable costs or expenses which would properly have been paid had such Property Owner exercised due diligence in the performance of such work.

Section 3.4 Disturbance

(a) Each of the Property Owners, and their respective successors and assigns, covenant and agree not to cause or permit any undue disturbance, obstructions, vibration, emissions or noise while exercising their rights to any easement, right-of-way or rights in the nature of easements which may disturb, disrupt or interfere with the ordinary use or enjoyment by any other Property Owner.

(b) Nothing in this section shall in any way be construed to restrict the reasonable, lawful or intended uses of the LHSC Lands or the easements, rights-of-way or rights in the nature of easements as may exist from time to time.

(c) In the event of any discharge or spill of any contaminant that causes or is likely to cause an adverse effect on the environment or which is in breach of any law, the person so responsible shall be responsible for all damages so caused, and for cleaning the said spill or discharge and shall be liable to indemnify any person affected by such discharge from any loss suffered as a result thereof.

Section 3.5 Disturbance

Each of the Parties hereto are equally liable for and shall indemnify the other Property Owners for all claims, demands, actions, causes of action, costs or expenses whatsoever arising out of this Agreement and the use, operation, repair, replacement or maintenance of Western Counties Road or the Shared Easements save and except when such claim, demand, action, cause of action or expense arose by virtue of the negligent act or omission of either party or its tenants, occupiers, agents or employees or their guests or invitees.

ARTICLE 4 – SHARE EASEMENTS AND SHARED EXPENSES

Section 4.1 Use of Shared Easements

Each of the Property Owners shall maintain and continue the use of the Shared Easements subject to compliance with all relevant statutes, regulations, official plans, zoning by-laws, development and site plan agreements, building codes and other applicable laws as are in force in respect of Western Counties Road, the Shared Easements or any part or parts thereof, as amended from time to time.

Section 4.2 Mutual Benefit and Payment of Proportionate Share

(a) The Property Owners acknowledge and agree that Western Counties Road and the Shared Easements are of benefit, value or necessity to more than one Property Owner notwithstanding that some of or all of the said Shared Easements may be owned by one or more Property Owners.

(b) In recognition of the historical treatment of expenses related to Western Counties Road and the Shared Easements but subject to Section 4.3 and Section 4.4 hereof, the parties agree that the responsibility for WCR Expenses and responsibility for Services Expenses related to Shared Easements shall be as follows:

- (i) WCR Expenses in that section of Western Counties Road from Commissioners Road to the boundary of the RFL Lands shall be that of LHSC;

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- (ii) WCR Expenses in that section of Western Counties Road south of the boundary of the RFL Lands shall be that of the City and RFL on such basis as they shall agree;
- (iii) Harmony Road and the interior road system off of Harmony Road shall be that of SJHC;
- (iv) Services Expenses incurred in the area from Commissioners Road to the south limit of Harmony Road shall be shared equally by LHSC and SJHC;
- (v) Services Expenses incurred in the area west of Western Counties Road shall be that of SJHC;
- (vi) Services Expenses in the area south of Harmony Road shall be that of the City and RFL in such proportions as they shall agree; and
- (vii) Services Expenses for hydro supplied by LHSC to RFL shall be paid by RFL to LHSC at metered rates.

Notwithstanding the foregoing, the LHSC shall be responsible to repair, within a reasonable time, any damage caused to Western Counties Road or the Shared Easements as a consequence of any construction undertaken by LHSC on the LHSC Lands, failing which the other Property Owners or any of them shall be entitled to repair the damage at the cost and expense of LHSC.

(c) Monies owing by the terms of this Agreement shall be paid within thirty (30) days of a demand in writing, which demand shall provide reasonable particulars of the purpose of and the calculation of the amount requested. In the event any Property Owner disputes the amount demanded it shall nonetheless pay the amount demanded prior to taking any proceedings pursuant to Article 8 hereof without prejudice to the rights to dispute whether the amount is rightfully claimed.

Section 4.3 Adjustments to Proportionate Share

In the event that a material change in utilization of Western Counties Road or the Shared Easements occurs during the term of this Agreement, any Property Owner may apply to the other Property Owners to adjust the Proportionate Shares of the Property Owners related to Western Counties Road or the Shared Easements or any part of the Shared Easements. In the event that the Property Owners are not able to agree on the Proportionate Share of the Property Owners from time to time, the matter may be referred to the dispute resolution provisions of Article 9 hereof.

Section 4.4 Future Development by Parties

In the event that a Property Owner intends to develop the lands owned by such Property Owner the effect of which would necessitate upgrades or modifications to Western Counties Road or the Shared Easements, the Property Owner seeking to develop the lands owned by such Property Owner shall bear the sole and entire responsibility for the cost of all required upgrades or modifications. To the extent that the development of the lands of a Property Owner is or will have a material change in the utilization by that Property Owner of Western Counties Road or the Shared Easements, the Proportionate Share of the Property Owners shall be adjusted to reflect the actual or contemplated utilization of the Property Owners following completion of such development. In the event that the Property Owners are not able to agree on the Proportionate Share of the Property Owners from time to time, the matter may be referred to the dispute resolution provisions of Article 9 hereof.

ARTICLE 5 – DEFAULT AND REMEDIES ON DEFAULT

Section 5.1 Default

If a Property Owner shall fail to pay to another Property Owner any sum of money properly payable by it in accordance with this Agreement within thirty (30) days of written demand properly made, then such Property Owner who fails to pay shall be a Defaulting Owner for the purposes of this Agreement. Any other Property Owner who shall pay such monies which are owing on behalf of the Defaulting Owner or incurs a debt or expense as a result of the said default shall be a Creditor Party for purposes of this Agreement.

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Section 5.2 Remedies on Default

In addition to any other rights the Creditor Party may have at law, the Creditor Party shall have the right to claim a lien (hereinafter called a “Lien”) to secure the payment of such sum of money as is owing to it by the Defaulting Party, together with all interest accruing thereon and its costs of recovering the said monies, against the property of the Defaulting Party within the Subdivision Plan. Such Lien shall arise after the Defaulting Party has been in default for at least thirty (30) days after written notice claiming the Lien, has been served on the Defaulting Party. The Creditor Party may enforce the Lien against the property of the Defaulting Party by the registration of a caution or other notice as may be permitted by the Land Titles Act (Ontario), as amended from time to time, or such other legislation that may be applicable from time to time. A Lien shall be enforceable by the Creditor Party in the same manner as a mortgage in default. The costs of registration and enforcement of the Lien and of recovery of the monies shall form part of the Lien.

Section 5.3 Remedies to Survive Termination

Notwithstanding any termination of this Agreement, any Lien which shall previously have arisen and remains unsatisfied, shall remain in full force and effect until the amount secured thereby shall be paid in full or satisfied, together with interest.

Section 5.4 Priority of Liens

If a Lien or notice thereof has not been registered, a bona fide arms length purchaser or chargee for value without notice of the Lien, shall acquire an interest in the applicable portion of the Property, free and clear of any Liens claimed.

Section 5.5 Interest

Any sum of money owing hereunder, shall accrue interest at the Interest Rate calculated and compounded monthly, from the date such sum is due to the date of payment. Any and all unpaid interest shall form part of a Lien.

ARTICLE 6 – TERMINATION

Section 6.1 Termination of Agreement

This Agreement cannot be terminated other than by the written consent of all of the Property Owners.

Section 6.2 No Termination of Shared Facilities or Services

Notwithstanding Section 6.1, unless the written consent referred to therein includes a mutual and specific surrender of the rights and obligations and the easements, rights-of-way and rights in the nature of easements by the Property Owners, the termination of this Agreement pursuant to and to the extent provided in Section 6.1 hereof shall not be deemed to apply to:

- (a) the easements, rights-of-way and rights in the nature of easements existing at that time, which shall remain in full force and effect; and
- (b) the rights and obligations of the Property Owners with respect to Western Counties Road and the Shared Easements.

Section 6.3 Assumption of Agreement by Successors

In the event a sale, exchange, transfer or other disposition (herein called a “**Transfer**”) of any part of the property owned by a Property Owner shall have occurred, this Agreement shall continue and remain in full force and effect and be binding upon any person succeeding to the interest of the Property Owner, and such succeeding person shall as a condition of the Transfer, covenant with, or provide an assumption agreement addressed to the other Property Owners, wherein the succeeding person covenants to assume, undertake and be bound by the obligations of that Property Owner to which it is succeeding. Upon the said successor executing such covenant or acknowledgement as required herein, the transferring Property Owner, only with respect to the part of the property transferred, shall thereafter be released of any further obligations, costs,

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liabilities and responsibilities arising hereunder (the “**Obligations**”) and shall not be entitled to any of the benefits and rights arising hereunder (the “**Benefits**”) as a Property Owner of the transferred part of the property from and after the effective date of the Transfer.

ARTICLE 7 – ADDITIONAL REMEDIES

Section 7.1 Self Help Remedy

When a Defaulting Party fails to perform any of its obligations under this Agreement, then in addition to any other right or privilege specifically provided for in this Agreement or at law, the Creditor Party may give the Defaulting Party written notice outlining the nature of the default and demanding the Defaulting Party to perform its obligation. If the Defaulting Party has not, within seventy-two (72) hours of receipt of such notice, commenced and thereafter is not diligently and in good faith taking all reasonable steps necessary to cure the default set out in such notice, then the Creditor Party may take all reasonable steps necessary to cure the default set out in such notice, including, without limitation, paying any cost or expenses required to be made by the Defaulting Party, entering upon the lands of such Defaulting Party and the payment of any sum secured by lien and/or the filing of a bond to discharge a lien. The Defaulting Party agrees to pay to the Creditor Party any reasonable cost or expense actually paid or incurred by the Creditor Party in performing the obligations of the Defaulting Party pursuant to this Agreement.

Section 7.2 Emergency Access

In the event of an emergency where the giving of notice would be unreasonable, any party may enter into the property of the other without notice to rectify the emergency situation and the cost of rectifying same shall be allocated in accordance with this Agreement based on the nature of the cost.

ARTICLE 8 – ARBITRATION

Section 8.1 Arbitration

In the event that any disagreement arises between the parties hereto, or their respective successors or assigns, with reference to this Agreement or any matter arising hereunder, then every such disagreement shall be referred to arbitration pursuant to the procedure herein. The Property Owner seeking to arbitrate (the “**Applicant**”) shall give notice in writing (the “**Notice**”) to all other Property Owners who are reasonable and proper parties to the dispute (the “**Other Parties**”). The Applicant and the Other Parties shall agree on the appointment of a sole arbitrator within fourteen (14) days of receipt of the Notice by the Other Parties. If the Applicant and Other Parties (the “**Disputing Parties**”) cannot agree upon a single arbitrator, the arbitration shall be conducted by a single arbitrator appointed by a judge of the Superior Court upon the application of any of the Disputing Parties. The arbitration shall be conducted in accordance with the provisions of the Arbitrations Act (Ontario) and any statutory amendments thereto for the time being in force. The decision arrived at by the arbitrator shall be binding and no appeal shall lie therefrom. Except as otherwise expressly set forth herein, liability for payment of costs of the arbitration shall be in the discretion of the arbitrator to determine.

ARTICLE 9 – GENERAL MATTERS

Section 9.1 Notice

Any demand, notice or other communication to be given in connection with this Agreement shall be sufficiently given if served personally, or if mailed by prepaid registered mail to the respective Property Owner at the address set forth for service in the last registered instrument filed in the Land Titles Division of the Registry Office of Middlesex, or to any other address or addresses as a Property Owner may designate from time to time. Every such notice shall be deemed to have been given upon the day it was personally served, or if mailed, upon the third postal date after it was mailed. Any party may designate in writing a substitute address for that set forth above, and thereafter notice shall be directed to such substituted address. In the event of a postal strike, or in the event of interruption of mail service then all notices must be delivered to the address set out, or such other address as may have been designated. The initial addresses for service are as follows:

Error! Unknown document property name.

- (a) in the case of the City to: 300 Dufferin Avenue, P. O. Box 5035, London, Ontario, N6A 4L9;
- (b) (b) in the case of LHSC to: 800 Commissioners Road East, London, Ontario, N6A 4V2;
- (c) in the case of SJHC to: 268 Grosvenor Street, London, Ontario, N6A 3N3;
- (d) in the case of RFL to: 944 Western Counties Road, London, Ontario, N6C 6A9

Section 9.2 Covenants Run with the Lands

Each of the Property Owners covenant and agree that they shall not interfere with, hinder, impede or disturb the enjoyment of all rights, benefits and privileges conferred on any other Property Owner by this Agreement except as expressly provided in this Agreement. The provisions of this Agreement are intended to run with the lands owned by the Property Owners and except as may otherwise be specifically provided shall bind and enure to the benefit of the respective Property Owners and their respective successors and assigns.

Section 9.3 Benefit to Property Owners and Others

The rights contained herein shall be for the benefit of each of the Property Owners and such occupants, tenants, licensees, employees, agents and contractors thereof as the applicable Property Owner shall permit.

Section 9.4 Assignment of Rights to Chargees

Any Property Owner may, without the necessity of conveying title to such Property Owner's Shared Easements, assign or otherwise transfer to any chargee in respect of any part of the Shared Easements, all or any of the rights, privileges, easements, rights-of-way and rights in the nature of easements and rights of entry contained herein and any such chargee may exercise any such right, privilege, easement, right-of-way and right in the nature of the easement and right of entry so assigned or otherwise transferred to it to the same extent as if in each instance this Agreement specifically granted such right, privilege, easement, right-of-way and right in the nature of an easement, or right of entry to such chargee. In the event that they shall exercise such right or privilege, such chargee shall be subrogated to the rights of its chargor to assert a lien against the Shared Services or another Property Owner.

Section 9.5 Waivers

No waiver of any breach of any term or provision to this Agreement shall be effective or binding unless made in writing and signed by the Property Owner purporting to give the same and unless otherwise provided in writing, shall be limited to the specific breach waived.

Section 9.6 Assignment

Except as otherwise expressly set forth herein, all of the terms and provisions of this Agreement shall enure to and be for the benefit of and be binding upon the Property Owners, and their respective heirs, executors, administrators, successors and permitted assigns. No Property Owner shall transfer, convey or grant the lands owned by such Property Owner to any other party unless the transferee or grantee thereof agrees to be bound by the provisions of this Agreement.

Section 9.7 Further Assurances

The Property Owners agree that they will from time to time at the reasonable request of any other Property Owner execute and deliver such instruments and other documents and assurances and take such further action as may be required to accomplish the purposes of this Agreement.

Section 9.8 Rights of Property Owners Independent

The rights available to Property Owners under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and need not be referenced to any other such right. Any one or more or any

combination of such rights may be exercised by Property Owners from time to time and no such exercise shall exhaust the rights or preclude any other Property Owner from exercising any one or more of such rights or combination from time to time thereafter or simultaneously.

Section 9.9 Force Majeure

Whenever and to the extent any person is prevented, hindered or delayed in the fulfillment of any obligation hereunder or the doing of any work or the making of any repairs or replacements by reason of war, act of the Queen's enemies, riot or insurrection, lock-out, labour disturbance, inability to obtain materials, goods, equipment, services or utilities required, or inability to obtain any permission or authority required by municipal by-law or federal or Ontario statute or regulation (provided all reasonable efforts have been made to obtain same) or any other event or occurrence beyond the control of the Property Owner seeking to rely on this subsection, save and except for financial inability, that person's liability to perform such obligation shall be postponed and it shall be relieved from any liability in damages or otherwise for breach hereof, for so long as and to the extent that such prevention, hindrance or delay continues to exist.

Section 9.10 Entire Agreement

This Agreement, including the schedules hereto, constitutes the entire agreement hereto. There are no, and shall not be any verbal statements, representations, warranties, undertakings or agreements between the parties and this Agreement may not be amended or modified in any respect except by written instrument signed by the Property Owners.

Section 9.11 Time

Time shall be of the essence of this Agreement.

Section 9.12 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on all the parties hereto notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart. Delivery by facsimile transmission or electronic mail of any executed counterpart of this Agreement shall be equally effective as delivery of a manually executed counterpart thereof.

[SIGNATURE PAGE IS NEXT]

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Mayor

Per: _____
Clerk

LONDON HEALTH SCIENCES CENTRE

Per: _____

Per: _____

ST. JOSEPH'S HEALTH CARE, LONDON

Per: _____

Per: _____

REFOREST LONDON

Per: _____

Per: _____

SCHEDULE A

- City Lands:** BLOCK 1, PLAN 33M-501; LONDON; BEING ALL OF PIN 08471-0588 (LT)
- LHSC Lands:** PART OF LOT 23, CONCESSION 1 DESIGNATED AS PART 7, PLAN 33R-12868; LONDON; BEING ALL OF PIN 08471-0585 (LT)
BLOCK 3, PLAN 33M-501 SAVE AND EXCEPT PART 1, PLAN 33R-_____; S/T R.O.W. AS SET OUT IN BROKEN OUTLINE ON PLAN 33M-501 AS IN 644393; S/T EASE OVER PARTS 4 AND 5 ON PLAN 33R-_____; LONDON; BEING ALL OF PIN 08471-_____ (LT)
BLOCK 5, PLAN 33M-501; S/T R.O.W. AS SET OUT IN BROKEN OUTLINE ON PLAN 33M-501 AS IN 644393; S/T EASE OVER PARTS 1, 2 AND 3 ON PLAN 33R-_____; LONDON; BEING ALL OF PIN 08471-0592 (LT)
- SJHC Lands:** BLOCK 4, PLAN 33M-501; LONDON; BEING ALL OF PIN 08471-0591 (LT)
BLOCK 9, PLAN 33M-501, LONDON; BEING ALL OF PIN 08471-0596 (LT)
- RFL Lands:** PART OF BLOCK 3, PLAN 33M-501 BEING PART 1, PLAN 33R-_____; LONDON; BEING ALL OF PIN _____