THIS AMENDED AND RESTATED FACILITY USE AGREEMENT made this day of , 2006

BETWEEN:

THAMES VALLEY DISTRICT SCHOOL BOARD  
(hereinafter called the “Board”)  

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF LONDON  
(hereinafter called the “City”)  

OF THE SECOND PART

WHEREAS the Board (by its predecessor The Board of Education of the City of London) and the City entered into the Memorandum of Agreement for purposes of setting out the basic principles for the development of the Facility (which includes the South London Aquatic Centre);

AND WHEREAS the Board (by its predecessor The Board of Education of the City of London) and the City entered into the Original Facility Use Agreement to set out their agreement with respect to the use of the Facility;

AND WHEREAS the Board and the City have agreed to enter into this Agreement to amend and restate the terms of the arrangements originally contemplated by the Memorandum of Agreement and the Original Facility Use Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, Board and the City agree as follows:

1.0 DEFINITIONS

1.1 "Act" shall mean the Education Act, R.S.O. 1990, c.E.2, as amended from time to time, and the regulations pursuant thereto;

1.2 "Agreement" means this agreement and the expressions "above", "below", "herein", "hereto", "hereunder", "hereof" and similar expressions refer to this Agreement.

1.3 "Approving Party" shall have the meaning set out in paragraph 5.3.1. of this Agreement;

1.4 "Arbitration Act" means the Arbitration Act, 1991, (S.O. 1991, c. 17) or as the same may be amended from time to time and the regulations pursuant thereto;

1.5 "Board" means the Thames Valley District School Board;
1.6  **"City"** means The Corporation of the City of London;

1.7  **"Commercial Activity"** includes and means any activity from which revenue is generated in the Shared Facilities or the Parking Areas for the benefit of either Party and includes without limitation, display of signs, vending machines, and collection of revenue from any source, but does not include isolated fundraising activities carried out by the invitees or students of the City or the Board for the community or the School in their respective Parking Areas;

1.8  **"Facility"** means the School, the Shared Facilities, the Pool Facility, the Parking Areas, the Perimeter Roads and the Lands;

1.9  **"Further Work"** shall have the meaning set out in section 8.3 of this Agreement;

1.10 **"HVAC"** means heating, ventilation and air conditioning;

1.11 **"Lands"** means those lands and premises located at 1400 Ernest Avenue, London, Ontario, more particularly described in Schedule "A" hereto;

1.12 **"Law" and "Laws"** shall mean and include all applicable law, the by-laws, regulations, requirements, orders, notices, policies and directions of all governmental or regulatory authorities and any other persons having jurisdiction over the Lands, the Parties or any of them;

1.13 **"Management Committee"** shall have the meaning set out in section 6.1 of this Agreement;

1.14 **"Memorandum of Agreement"** means the Memorandum of Agreement made as of July, 1997 between the Board (by its predecessor The Board of Education of the City of London) and the City, for purposes of setting out the basic principles for the development of the Facility;

1.15 **"Operating Costs"** means those costs identified in sections 8.1 and 8.2, which are contemplated to be shared by the Parties;

1.16 **"Original Facility Use Agreement"** means the facility use agreement dated July 2, 1997 between the Board (by its predecessor The Board of Education of the City of London) and the City for purposes of setting out their agreement with respect to the use of the Facility;

1.17 **"Parking Areas"** means and includes those areas designated for each of the Board (as shown in red on Schedule "C" hereto) and the City (as shown in green on Schedule "C" hereto);

1.18 **"Party" and "Parties"** shall mean either or both of the parties to this Agreement;

1.19 **"Perimeter Roads"** means those roads providing access to the Lands and shall be those roadways as shown in blue on Schedule "C" hereto;

1.20 **"Pool Facility"** means the public pool facility constructed on the Lands (and known as the South London Aquatic Facility), together with the meeting room and washroom
facilities located contiguous thereto all as designated in green and yellow on Schedule "B" hereto, and "Pool Area" means the area designated in yellow on Schedule "B" hereto;

1.21 "Premises" and references to respective Premises refer to the School where reference is made to the Board and to the Pool Facility where reference is made to the City;

1.22 "Proposed Use" shall have the meaning set out in paragraph 5.3.1. of this Agreement;

1.23 "Royal Bank of Canada Prime Rate" shall have the meaning set out in section 1.21 of this Agreement;

1.24 "School" means the White Oaks Public School situated on the Lands as designated in red on Schedule "B" hereto, and;

1.25 "Shared Facilities" means the following areas and building systems in the Facility:

(a) the separation or party wall between the Pool Facility and the School;
(b) the Perimeter Roads;
(c) the main entrance way from Bradley Avenue and all corridors shown in blue on Schedule "B" hereto;
(d) the electrical, HVAC systems for the Facility (excluding the mechanical/electrical systems and the dehumidification system for the Pool Area);
(e) the fire alarm and sprinkler systems for the Facility;
(f) the elevator providing access to the second floor of the Facility; and
(g) all other areas designated in blue on Schedule "B" hereto not specifically referred to above.

2.0 SCOPE AND TERM

2.1 It is agreed that the City and the Board shall cooperate in the use of the various elements of the Facility in order to provide for the cooperative use of the Pool Facility, the Shared Facilities and certain portions of the School, and the provisions of this Agreement shall be construed in accordance with this principle.

2.2 Notwithstanding any of the terms of this Agreement, the use of the Facility by the Board and the City shall not constitute a partnership between the Parties for any purpose, nor shall it constitute either party agent for the other, nor any other relationship whereby either could be liable for any act or omission of the other, unless specifically provided in this Agreement. Neither the Board nor the City shall have any authority to act for the other, or to incur any obligation on behalf of the other, save as specifically provided by this Agreement. Each Party covenants to indemnify the other from all claims, losses, costs, charges, fees, expenses,
damages, obligations and responsibilities incurred by the other by reason of any action or omission of the other outside the scope of the authority specifically provided by this Agreement.

2.3 This Agreement shall take effect upon the date hereof and shall continue in full force for ninety-nine (99) years, unless terminated by mutual agreement of the Parties.

3.0 OWNERSHIP INTERESTS

3.1 It is acknowledged and agreed that the Board is the registered owner of the fee simple of the Lands, but that it has been agreed that the Board and the City shall be the beneficial owner of the Facility, as tenants in common, with an undivided interest allocated in accordance with their proportionate shares which are as follows:

(i) Lands - Board 100%
(ii) School - Board 100%;
(iii) Pool Facility - City 100%; and
(iv) Shared Facilities - the City as to an undivided twenty-nine point two (29.2%) percent interest and the Board as to an undivided seventy point eight (70.8%) interest or as otherwise agreed between the Parties.

4.0 USE OF FACILITY

4.1 Subject to the further provisions of this Agreement and any other written agreements between the Parties, the Board shall maintain, operate and have exclusive use of the School and the City shall maintain, operate and have exclusive use of the Pool Facility.

4.2 The City shall have the exclusive use of the area designated in green and yellow on Schedule "C" hereto as parking facilities for the Pool Facility, and the Board shall have the exclusive use of the area designated in red on Schedule "C" hereto as parking facilities for the School.

4.3 Each Party shall have for itself and its officers, agents, employees and customers, the non-exclusive right to use and enjoy the Shared Facilities, in common with all others entitled to them. The Board acknowledges that the Shared Facilities will be maintained and managed by City in accordance with the further provisions of this Agreement, which maintenance and management will not be undertaken in a manner which unduly restricts the Board's use of the Shared Facilities.

4.4 The respective portions of the Parking Areas shall be used solely for the purposes of parking motor vehicles on a daily or temporary basis by the respective Parties and their invitees, except as may otherwise be agreed between the Parties in writing.

4.5 The Shared Facilities may be used from time to time for purposes of providing pedestrian and/or vehicular access and egress from various portions of the Facility, the maintenance and operation of the Facility and such other uses as may be agreed between the Parties from time to time.
4.6 The Board shall: light the Perimeter Roads and Parking Areas; provide the electrical and HVAC systems for the Facility (excluding the mechanical/electrical systems and the dehumidification system for the Pool Area); and, provide the fire alarm and sprinkler systems for the Facility, in accordance with all applicable standards and codes.

4.7 The City and the Board may enter into such agreements consistent with the practice currently established and as may be amended from time to time by the Parties, with respect to arrangements for the use of the Pool Facility by the Board and of the use of the School by the City.

4.8 It is acknowledged by the Parties that it is anticipated that the City and the Board may enter in agreements from time to time with respect to Commercial Activity within the Shared Facilities and any revenue so generated shall be shared as agreed by the Parties. Any such Commercial Activity in the Shared Facilities shall be prohibited unless consented in writing by each Party, provided that such consent shall not be unreasonably withheld.

5.0 RESTRICTIONS ON USE

5.1 General Use

5.1.1 Notwithstanding the provisions of any agreement between the Parties hereto, without the express written permission of each Party, no portion of the Shared Facilities may be used or occupied by any person for any purpose except as expressly permitted by this Agreement.

5.1.2 No portion of the Shared Facilities shall be used or occupied by any person in a manner which is likely to damage or injure any person or property or in a manner which will unreasonably interfere with the use and enjoyment by any Party of any portion of the Facility which it is entitled to use or occupy. In addition to the foregoing, the City and the Board agree that they shall use their respective Premises, and the Shared Facilities at all times in a manner that is compatible with the safe and proper operation of the School and of the Pool Facility.

5.2 Prohibited Uses

5.2.1 Notwithstanding any provision of any agreement between the Parties relating to the Facility, no portion of the Facility shall be occupied or used by any person for any of the following activities at any time without the prior approval of all Parties:

(a) the service and/or consumption of alcoholic beverages;
(b) gambling or other similar activities;
(c) smoking;
(d) canvassing and/or soliciting of any nature and kind; and
(e) any other activity in the aspect of which directly or indirectly interferes with the safe and proper operation of the School or the Pool Facility.

5.3 Right to Withhold Approval

5.3.1 For the purposes of paragraph 5.1.1, the Parties agree that any Party may reasonably withhold its approval (the "Approving Party") to a use proposed by the other Party (the "Proposed Use") in any of the following circumstances:
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(a) the Approving Party, acting reasonably and having regard to all circumstances, determines that any material aspect of the Proposed Use or any potential user groups or individuals is incompatible with the safe and proper operation of the School or Pool Facility;

(b) the Approving Party, acting reasonably and having regard to all circumstances, determines that the Proposed Use or any potential user groups or individuals would result in the increase in the costs of operating the School, the Pool Facility or the Shared Facilities as the case may be (unless the Party requesting the Proposed Use agrees in writing to be solely responsible for such increased costs);

(c) the Approving Party, acting reasonably and having regard to all the circumstances, determines that the Proposed Use would result in unreasonable or excessive wear and tear to the Facility or any part thereof, or would place an unreasonable or excessive burden on the Facility or any part thereof, including any utility or service (unless the Party requesting the Proposed Use agrees in writing to be solely responsible for the costs of repairing such excessive wear and tear); and

(d) the Approving Party, acting reasonably and having regard to all the circumstances, determines that inadequate provisions have been made to protect the rights of the Approving Party and the Party requesting the Proposed Use is unwilling to make, at its sole cost, such provisions as the Approving Party determines to be adequate.

5.3.2 In giving its approval to a Proposed Use, an Approving Party may, at its option, impose reasonable terms and conditions on such Proposed Use.

5.4 **Compliance with Rules**

5.4.1 Each Party and its invitees shall observe and comply with all Laws and each Party covenants and agrees that it will not operate or use its respective Premises or permit its respective Premises to be operated or used for any unlawful purpose or any purpose which is not in compliance with or permitted under the requirements of all Laws or agreements.

5.4.2 The Board and the City may agree on rules governing the use and enjoyment of the Shared Facilities, as contemplated in section 6.1.

5.4.3 Such rules may prohibit the City and/or the Board and their respective invitees from using the Shared Facilities in the vicinity of the School during school hours, if such use may reasonably disrupt the use of the School.

5.4.4 The Parties and their respective invitees shall comply with the rules at all times.

5.4.5 The Parties each shall take all reasonable steps to enforce such rules.
6.0 MANAGEMENT COMMITTEE AND ARBITRATION

6.1 A committee of four (4) persons consisting of two (2) appointed representatives of the City and two (2) appointed representatives of the Board (the "Management Committee") shall be formed to: administer and interpret the provisions of this Agreement; provide opportunity for consultation between the Board and the City with respect to the provisions hereof; establish rules for the use of the Shared Facilities for all purposes; and, to attempt to resolve any disputes which may arise between the Parties under this Agreement. Except as specifically provided for in this Agreement, the Management Committee shall also be the authority for the administration, use, operation and management of the Shared Facilities and the coordination of all matters relating to the cooperative use of the Shared Facilities by the Board and the City.

6.2 The Management Committee will operate on a consensus basis in its decision making. In the event that the Management Committee cannot reach agreement by consensus, any issues that cannot be resolved by the Management Committee shall be referred to the Director of Fleet, Facilities and Departmental Resources for the City and the Superintendent of the Board responsible for the School. Any issues that cannot be resolved by such persons within a period of thirty (30) days, shall be referred to a committee consisting of the City's General Manager of Community Services, the City's General Manager of Environmental and Engineering Services Department, the Director of Education for the Board and the Chair of the Board. In the event such committee is unable to resolve such issues within a period of thirty (30) days, the question or matter in dispute shall be referred to a single arbitrator if the Parties can agree upon one and otherwise to three arbitrators, one to be appointed by each Party and a third to be chosen by the two first named arbitrators in writing before they enter upon the business of the arbitration. If either of the Parties hereto shall refuse or neglect to appoint an arbitrator within fifteen (15) days after the other Party to the reference shall have appointed an arbitrator and shall have served written notice upon the first mentioned Party requiring such Party to make such appointment, then the arbitrator first appointed shall, at the request of the Party so appointing him or her, proceed to hear and determine the matter at issue as if he or she were a single arbitrator appointed by both Parties for that purpose, and the decision which may be made by the arbitrators or the majority of them or by the said single arbitrator shall be final and binding upon the Parties hereto. In the event that the first two arbitrators appointed by the Parties do not agree upon a third arbitrator within seven (7) days after the appointment of the last of them, then a third arbitrator may, upon petition of the Party not in default, be appointed by a judge of the Ontario Superior Court of Justice. The cost of arbitration shall be apportioned between the Parties as the arbitrators or a majority of them may decide.

6.3 Notwithstanding the foregoing, if the circumstances permit, there is an expectation that the principal of the School and the manager employed by the City at the Pool Facility will work together to resolve issues prior to referring any issues to the Management Committee.

7.0 EMERGENCY PROCEDURES

The Parties shall abide by all emergency procedures and drills established for the Facility by the Management Committee, from time to time, including, without limitation fire drills and other safety measures.
8.0 OPERATING OBLIGATIONS AND COSTS

8.1 City’s Responsibilities

8.1.1 Subject to the provisions of this Agreement, the City shall have care and control of the operation, cleaning, repair and general and daily maintenance of the Shared Facilities, save and except for the maintenance of the electrical, HVAC systems, and, subject to any other provisions of this Agreement, it shall be the responsibility of the City to effect all cleaning, maintenance and repair of the Shared Facilities. Except as otherwise provided, the costs of such cleaning, maintenance and repair of the Shared Facilities (save and except for costs of the maintenance of the electrical and HVAC systems for the Facility and of the fire alarm system and sprinkler system for the Facility, which are addressed in sections 8.1.2, 8.2.1 and 8.2.2), shall be paid by the City, in the first instance, but shall be shared by the Parties in accordance with section 9.0, in the following proportions:

- City - 29.2%
- Board - 70.8%

8.1.2 The City shall be responsible to effect all maintenance, repair and reconstruction of the Pool Facility, including without limitation, the mechanical/electrical systems and dehumidification systems for the Pool Area, and shall be solely responsible for the cost thereof.

8.1.3 The City shall be responsible to carry out all repair and general and winter maintenance of the Parking Areas and Perimeter Roads in accordance with the standards applied by the City to its properties from time to time, and the Board shall be responsible for all summer lawn maintenance in accordance with the standards applied by the Board to its properties from time to time, including those lawns contiguous to each Parking Area. The cost of the repair and general and winter maintenance of the Parking Areas and the Perimeter Roads shall be paid by the City, in the first instance, but shall be shared by the Parties in accordance with section 9.0, in the following proportions:

- City - 52%
- Board - 48%

8.1.4 The Parties agree that the City shall cause the Shared Facilities to be maintained and repaired at all times in a manner equivalent to the average standards from time to time applied to school properties of comparable age within the City of London operated by the Board in accordance with the Act.

8.2 Board’s Responsibilities

8.2.1 Subject to paragraph 8.1.2 hereof and the other provisions of this Agreement, it shall be the responsibility of the Board to effect all maintenance and repair of the electrical, HVAC and mechanical systems for the Facility. The cost of maintaining and repairing such equipment, unless otherwise agreed, shall be paid by the Board, in the first instance, but shall be shared by the Parties in accordance with section 9.0, in the following proportions:

- City - 59%
- Board - 41%
8.2.2 The Board shall be responsible for all maintenance and repair of the fire alarm and sprinkler systems for the Facility. The cost of maintaining and repairing such equipment, unless otherwise agreed to, shall be paid by the Board, in the first instance, but shall be shared by the Parties in accordance with section 9.0, in the following proportions:

City - 52%
Board - 48%

8.2.3 The Board shall be responsible for obtaining and maintaining standard all-risk property insurance for the Facility pursuant to the provisions of section 11.2. The cost of such insurance shall be paid by the Board, in the first instance, but shall be shared by the Parties in accordance with section 9.0 hereof, in the following proportions:

City - 16.4%
Board - 83.6%

8.2.4 The Board shall be responsible for the summer lawn maintenance for the Facility. The cost of the summer lawn maintenance shall be paid by the Board, in the first instance, but shall be shared by the Parties in accordance with section 9.0, in the following proportions:

City - 31.7%
Board - 68.3%

8.2.5 The Board shall be responsible for the care, control, operation and maintenance of the fire alarm system and sprinkler system for the Facility. The cost of operating and maintaining the fire alarm system and the sprinkler system for the Facility shall be paid by the Board, in the first instance, but shall be shared by the Parties in accordance with Section 9.0, in the following proportions:

City - 16.4%
Board - 83.6%

8.2.6 Notwithstanding the foregoing provisions of sections 8.1 and 8.2, following the execution of this Agreement, the Parties agree to negotiate in good faith (or if more expedient through the facilities of the Management Committee), for purposes of reaching an agreement as to fixed amounts to be paid by the Parties pursuant to the provisions of sections 8.1 and 8.2 for the five (5) year period following the execution of this Agreement, based on estimates of the costs thereof determined on a square footage calculation, which costs will be shared on the basis of the percentages set forth above.
8.3 **Utilities**

8.3.1 The Board shall provide the utilities (i.e. natural gas, electricity and water), for purposes of servicing the Facility through those provided to the School, provided that it is understood and agreed that all amounts incurred by the Board in respect thereof shall be allocated between the Parties on the following basis, and each Party shall be responsible to pay its proportionate share of such amounts:

<table>
<thead>
<tr>
<th>UTILITY</th>
<th>PROPORTIONATE SHARE OF COSTS</th>
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<tbody>
<tr>
<td></td>
<td>SCHOOL</td>
</tr>
<tr>
<td>NATURAL GAS</td>
<td>48%</td>
</tr>
<tr>
<td>ELECTRICITY</td>
<td>59%</td>
</tr>
<tr>
<td>WATER</td>
<td>36%</td>
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For purposes of the foregoing, the Board shall within twenty (20) days of the end of each calendar quarter provide the City with an accounting of the costs incurred by the Board in respect of the above referenced utilities for the calendar quarter then ended and the City shall pay to the Board the proportionate share thereof to be paid by it within ten (10) days of the City's receipt of any such accounting.

8.4 **Capital improvements to Shared Facilities**

8.4.1 Except as expressly set out in this Agreement, the Parties agree that there shall be no construction, alteration, improvement, addition, replacement, reconstruction or redevelopment of all or any of the Shared Facilities, or demolition of any Shared Facilities ("Further Work"), unless such Further Work is recommended by the Management Committee and approved by the Parties, which approval may not be unreasonably withheld by any Party, but which may be given subject to the satisfaction of reasonable conditions established by the Party giving such approval. The cost of any Further Work shall be shared by the Parties in the following proportions:

City - 29.2%
Board - 70.8.5%

Notwithstanding any of the foregoing:

(a) to the extent that any Further Work is at the request of and for the benefit of one Party alone, the cost thereof shall be born by that Party.

(b) to the extent that any Further Work relates to the replacement of utility services and/or mechanical or electrical equipment from the property line for the Lands to the applicable utility meter and is otherwise in respect of a utility that services the entire Facility, the cost thereof shall be shared by the Parties on the following basis:
(i) to the extent that such Further Work relates to natural gas services:

City - 52%
Board - 48%

(ii) to the extent that such Further Work relates to electricity:

City - 41%
Board - 59%

(iii) to the extent that such Further Work relates to water:

City - 64%
Board - 36%

c) to the extent that any Further Work relates to the repair of the Perimeter Roads, the costs thereof shall be shared by the Parties in the following proportions:

City – 52%
Board – 48%

d) to the extent that any Further Work relates to the repair of the fire alarm and/or sprinkler systems for the Facility, the costs thereof shall be shared by the Parties in the following proportions:

City – 16.4%
Board – 83.6%

e) the Parties shall each be solely responsible for the costs of any Further Work undertaken in respect of their respective Parking Areas.

8.4.2 Upon installation of any repairs, upgrades and/or reconstruction to the Shared Facilities, all such work shall become part of the Shared Facilities and be subject to the terms of this Agreement.

8.5 Prerequisites to Approval for Further Work

8.5.1 The Parties agree that any alteration, addition, improvement or other change to the Shared Facilities, shall comply with the following terms and conditions unless specifically waived by the Parties hereto in writing:

(a) Such change to any of the Shared Facilities will not materially affect the use of the Pool Facility or of the School;

(b) Any such interior change shall conform to the policies and guidelines established by the Board for schools within its jurisdiction in effect from time to time with respect to all interior designs and furnishings;

(c) The plans and specifications for such work shall be consistent in design and materials with the then existing Facility;
(d) The services or the servicing systems that provide any service to any portion of the Facility shall not be unduly disturbed, interfered with, interrupted or damaged. The tolerance capacities of such services or servicing systems shall not be exceeded, and the demand or load reasonably expected to be placed on any such services or servicing systems as a result of such work shall not reduce or otherwise impair the availability or continued use and enjoyment of such service or servicing system to the balance of the Facility;

(e) The work during construction and upon completion shall comply at all times with the provisions of all Laws;

(f) Adequate measures shall be taken so that: any noise or vibration resulting from the performance of the work; any interference or loss of use and enjoyment caused to any of the Parties; or, any interference caused to the pedestrian or vehicular access and egress from any portion of the Facility, is reduced to and maintained at all times at reasonable levels;

(g) Such work shall not result, directly or indirectly, in the cancellation or threat of cancellation of any policy of insurance maintained by the Parties; if the work results in an increase in the premium cost of any policy of insurance placed by or on behalf of the Parties, the Party performing such work shall pay or reimburse the other Party for such increase;

(h) Such work shall be performed diligently and as expeditiously as possible in the circumstances; and

(i) Any portions of the Facility or of the Lands adjoining the work shall be restored to the same condition as existed prior to the commencement of such work or as close thereto as reasonably possible.

(j) Any dispute arising out of the interpretation or application of this section 8.0, shall be referred to the Management Committee and otherwise resolved in accordance with the provisions of section 6.2 hereof.

9.0 DETERMINATION AND PAYMENT OF RESPECTIVE COSTS

9.1 Each Party shall maintain in accordance with generally accepted accounting principles the books, records and accounts required to accurately reflect the Operating Costs incurred by it and each Party shall have the right upon reasonable notice to inspect such books and records of the other Party.

9.2 Within sixty (60) days after August 31 in each year during the term of this Agreement, each Party shall furnish to the other a statement of the actual amount of Operating Costs incurred by it during the twelve (12) month period ended on August 31 and the share thereof payable by each pursuant to this Agreement, showing in reasonable detail the information relevant and necessary to the exact calculation and determination of these amounts. The amounts owing by each Party to the other shall be set off and the Party thereafter owing any amount to the other shall pay such amount within thirty (30) days after the date of delivery of the last of the statements to be delivered.
9.3 At any time that either Party determines that the relative proportion of any sharing of the Operating Costs as set out in this Agreement may not be equitable, either Party, may, by written notice to the other Party may advise the other Party that it has determined that its share of the Facility Costs has been materially inequitable to such Party.

10.0 INTEREST ON ARREARS

10.1 Each Party shall pay to the other interest on amounts owing to the other pursuant to the provisions of this Agreement and which are not in dispute, and are in arrears, at the rate which is 1.5% above the annual rate of interest charged by the Royal Bank of Canada to its best customers and designated as its prime rate on the date any such amount is due (the "Royal Bank of Canada Prime Rate") per annum calculated monthly, from the date when the same became due, until paid. If either Party at any time before, during or after the term of this Agreement determines that the other Party has not paid any amount that the other Party should have paid under this Agreement, such Party shall pay such amount to the other Party, on demand and this obligation shall survive the expiration or earlier termination of this Agreement, as the case may be. In any action or proceeding or proposed proceeding or action, which either Party may be required to pursue to enforce its rights hereunder, and particularly in any action to collect amounts owing hereunder, and which are not in dispute, each Party agrees to pay all costs incurred by the other Party in enforcing payment, including reasonable solicitor’s fees.

Each Party agrees that the other Party may, at its option, apply or allocate any sums received from or due to it from the other Party against any amounts, moneys or charges due and payable hereunder in such manner as such Party sees fit.

11.0 INSURANCE

11.1 City’s Insurance

11.1.1 Throughout the term of this Agreement, the City shall obtain and maintain third party general liability insurance covering all use and occupation of the Facility in an amount not less than Ten Million ($10,000,000) dollars with respect to the City’s operations and obligations under this Agreement and such insurance shall include the Board as an additional insured with respect to the operations and obligations of the City under this Agreement.

11.1.2 The City shall not do, omit to do, or permit to be done or omitted to be done in or on the Facility anything that may void coverage under or increase the premiums on the property insurance policies carried by the Board on the Facility.

11.1.3 The City will provide the Board, from time to time, with certificate(s) of insurance evidencing the insurance described in paragraph 11.1.1. Such certificate shall be delivered within thirty (30) days of commencement of this Agreement and thereafter once annually on the renewal of such insurance coverage.

11.2 Board’s Insurance

11.2.1 Throughout the term of this Agreement, the Board shall obtain and maintain the insurance shown below:

   (a) Standard all risk property and boiler and machinery insurance covering all of the Facility, in an amount not less than the full replacement cost value,
insuring the whole of the Facility, and naming the City as an insured by endorsement, with a deductible of one hundred thousand ($100,000.00) dollars, provided that each Party shall insure their own contents;

(b) Third party general liability insurance covering all use and occupation of the Facility by the Board in an amount not less than Ten Million ($10,000,000.) dollars with respect to the Board’s operations of the Facility and its obligations under this Agreement [and such insurance shall include the City as an additional insured with respect to the Board’s operations of the Facility and its obligations under this Agreement];

11.2.2 The Board shall not do, omit to do, or permit to be done or omitted to be done in the Facility anything that may void coverage under or increase the premiums on the property insurance policies carried by the City on the Facility.

11.2.3 The Board will provide the City, from time to time, with certificate(s) of insurance evidencing the insurance described in paragraph 11.2.1 (a) and (b). Such certificate shall be delivered within thirty (30) days of commencement of this Agreement and thereafter once annually on the renewal of such insurance coverage.

11.3 Any deductible with respect to property damage shall be paid by the Parties in accordance with that ratio that the damages to each of the respective Premises of each Party and the damage to the Shared Facilities is of the total damage to the Facility. Each Party shall be responsible for the payment that portion of the deductible as calculated as being applicable to their respective Premises, and the portion of the deductible calculated as being applicable to the Shared Facilities shall be further apportioned in accordance with the following:

City- 29.2%
Board - 70.8%

and upon such expense being incurred, each Party shall pay forthwith their respective portion of the deductible payable by it pursuant to this paragraph.

11.4 The Parties agree that the type, form and amount of insurance shall be reviewed, and, if necessary, renegotiated not less than every five (5) years.

11.5 If the Parties are unable to agree on the type, form and/or amount of such insurance and any such renegotiation, the matter shall be referred to the Management Committee and otherwise resolved in accordance with the provisions of section 6.2 hereof.

11.6 The Parties covenant and agree that, unless the Parties otherwise agree in writing, all insurance required by this Agreement shall be carried in favour of each of the Parties, as insured, under each policy in accordance with their respective interests.

12.0 MUTUAL INDEMNIFICATION

12.1 Subject to the provisions of section 8.0 hereof, the City shall indemnify and hold the Board harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions of the City, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, occasioned through its use and occupation of the Facility or occasioned wholly or in part in any manner by any construction, alteration, repair or reconstruction, undertaken or directed by the City, of the Pool Facility or the Shared Facilities.
12.2 Subject to the provisions of sections 8.0 and 13.3 hereof, the Board shall indemnify and hold the City harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions by the Board, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, occasioned through its use and occupation of the Facility or occasioned wholly or in part in any manner by any construction, alteration, repair or reconstruction, undertaken or directed by Board, of the of the School or the Shared Facilities.

12.3 Subject to the provisions of section 8.0 hereof, the Party at whose expense any construction, alteration, repair or reconstruction is carried out shall be solely responsible for vacating promptly any and all Construction Liens registered against the Lands arising out of or in connection with such work, and shall indemnify and save harmless the other Party with respect to any claims by any person, pursuant to the Construction Lien Act arising out of or in connection with such work.

13.0 RIGHT OF ENTRY, STRIKES, LOCKOUTS AND OTHER LABOUR DISTURBANCES

13.1 If either Party shall fail to perform any of the covenants or obligations under this Agreement, the other Party may, from time to time and in its discretion, perform or procure performance of any such obligations following fourteen (14) business days from having given notice to the other, of the other's failure to do so, and for such purposes, may enter upon the Shared Facilities and carry out such work upon the Shared Facilities that it may consider requisite or necessary, and shall be reimbursed by the other for the other Party's proportionate share of such costs. Provided that if either Party reasonably determines that the delay necessary to provide such notice may cause additional damage or create a situation of danger, such Party may enter without notice, provided that such Party gives notice to the other of such entry as soon as reasonable under the circumstances.

13.2 Either Party may enter upon the portion of the Facility under the exclusive use of the other, without notice, in the event that such Party reasonably determines that such entry is necessary in the circumstances.

13.3 Notwithstanding the foregoing provisions of this section 13.0, in the event of any, acting reasonably, strike, lockout or other labour disturbance affecting the Board, the Board shall have the right to close the Shared Facility and the Pool Facility and prohibit entrance thereto by anyone, including the City. In such event, the City's obligation to pay its share of the Operating Costs shall be suspended during that time that the Shared Facilities and the Pool Facility are not available to the City, but the Board shall otherwise have no obligation or liability to the City in respect of any such closure. In the event of a strike, lockout or other labour disturbance affecting the Board which does not result in the Board deciding to restrict access to or close the Shared Facilities or the Pool Facility, the City may continue to use and occupy the Shared Facilities and the Pool Facility in accordance with the terms and conditions of this Agreement; however, should the City, in its discretion, decide not to use or occupy the Shared Facilities or the Pool Facility during such strike, lockout or other labour disturbance, the City's obligation to pay its share of the Operating Costs shall be suspended during the time that access to the Shared Facilities or the Pool Facility is not available.

14.0 CLOSING OF THE SCHOOL OR POOL FACILITY

14.1 In the event that: the Board, in its discretion, decides to close the School and the City decides to continue to occupy and operate the Pool Facility; or, the City, in its discretion,
decides to close the Pool Facility and the Board decides to continue to operate and occupy the School, the Board and the City agree to meet and negotiate, in good faith and acting reasonably, an amendment to the sharing of the Operating Costs, as well as the various operational obligations contemplated hereunder, from what is provided for in this Agreement. The Parties agree that it is their intention that such amendment shall be an equitable sharing of the Operating Costs and the operational responsibilities based on the fact that only one of the Parties will be occupying the Facility.

15.0 GENERAL PROVISIONS

15.1 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, facsimile transmission or by registered mail addressed to the recipient as follows:

The Board's Address:
THAMES VALLEY DISTRICT SCHOOL BOARD
Attention: Executive Superintendent of Business
1250 Dundas Street
P. O. Box 5888
London, Ontario N6A 5L1
phone: (519) 452-2026
fax: (519) 452-2354

The City's Address:
THE CORPORATION OF THE CITY OF LONDON
Attention: General Manager of Environmental and Engineering Services & City Engineer
300 Dufferin Avenue
P. O. Box 5035
London, Ontario N6A 4L9
phone: (519) 661-4925
fax: (519) 661-5931

or such other address or individual as may be designated by notice by any Party to the other. Any Communication given by personal delivery or facsimile transmission shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the second business day following the deposit thereof in the mail. 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.

15.2 Section headings are not to be considered part of this Agreement and are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents thereof.
15.3 Time shall be of the essence of this Agreement and of every part thereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

15.4 The Parties shall sign such further and other papers and documents as may be necessary and desirable to give full force and effect to this Agreement and every part thereof.

15.5 Unless otherwise expressly provided in this Agreement, each Party shall act reasonably in good faith, and without delay in:

15.5.1 considering any requests for its consent, approval or other form of authorization required to be given or granted by it hereunder; and

15.5.2 making any decision or taking any action with respect to the matter concerning the Facility from time to time.

15.6 Provisions of this Agreement are intended to and shall run with the respective interests in the Facility required by each of the Parties hereto from time to time and shall benefit and burden each such interest and shall bind and enure to the benefit of the Parties hereto and their successors and permitted assigns.

15.7 This Agreement shall not be assigned by either Party without the express written consent of the other, which consent may be unreasonably withheld.

15.8 This Agreement may be executed in counterparts each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

15.9 All provisions of this Agreement are to be construed as separate and distinct covenants and agreements, severable from each other and separately enforceable.

15.10 All words and personal pronouns relating thereto shall be read and construed as the number and gender of the Party or Parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

15.11 This Agreement shall be construed in accordance with the laws of the Province of Ontario.

15.12 This Agreement shall constitute the entire agreement among the Parties hereto with respect to the Facility. No subsequent variation or amendment hereof shall have any effect unless made in writing and signed by the Parties.
15.13 This Agreement replaces the Original Facility Use Agreement and the Memorandum of Agreement, from and after the date hereof, the Original Facility Use Agreement and the Memorandum of Agreement shall have no force or effect.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

THAMES VALLEY DISTRICT SCHOOL BOARD
Per: ________________________________

Per: ________________________________

THE CORPORATION OF THE CITY OF LONDON
Per: ________________________________

Per: ________________________________
SCHEDULE "A"

FIRSTLY:
ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and being composed of Parcel P-4, Section M3, being Part of Block P, Plan M3, designated as Parts 1 and 2 on Reference Plan 33R-2669; and SUBJECT to an Easement in favour of Bell Canada and The Corporation of the City of London, upon, over, under, along and across Part of Block P on Plan M3, designated as Part 1 on Plan 33R-2669, and now known as PIN 08496-0005.

SECONDLY:
ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and being composed of Parcel M-2, Section M1, being Part of Block M, Plan M3, more particularly designated as Parts 3 and 4 on Reference Plan 33R-2669; and SUBJECT to an Easement in favour of The Corporation of the City of London and Bell Canada, upon, over, under, along and across Part 4 on Reference Plan 33R-2669, and now known as PIN 08496-0006.