THE EMERGENCY & COMMUNITY SERVICES COMMITTEE PRESENTS REPORT 10-010 AND RESPECTFULLY RECOMMENDS:

1. **On Any Given Night III: Homelessness Indicators Report (CS10063) (City Wide) (item 5.1)**

2. Dyanne Semogas and David Derbyshire, on behalf of the McQuesten Community Planning Team, seeking endorsement of an application (due June 25, 2010) to the Ministry of Health for a Nurse Practitioner led Clinic for the McQuesten Neighbourhood (Item 6.1)

(a) That the application, to be submitted by the McQuesten Community Planning Team, to the Ministry of Health and Long-Term Care for a Nurse Practitioner Led Clinic for the McQuesten Neighbourhood, be endorsed.

(b) That staff be directed to review the implications associated with providing the required space, within the Oriole Crescent complex, rent free to the McQuesten Community Planning Team for the proposed a Nurse Practitioner Led Clinic for the McQuesten Neighbourhood, and report back to CityHousing Hamilton as soon as possible.

3. Westmount Land Lease and Facility Use Agreements (CS10068) (Ward 6) (Item 8.1)

(a) That the Westmount Land Lease Agreement (attached as Appendix A to Report 10-010) between the City of Hamilton and the Hamilton Wentworth District School Board for the purpose of constructing a new recreation facility, to be located at 39 Montcalm Drive, be approved;

(b) That the Facility Use Agreement (attached as Appendix B to Report 10-010) between the City of Hamilton and the Hamilton Wentworth District School Board for the use of the new recreation centre to be located at 39 Montcalm Drive, and use of the adjacent City owned park, be approved;

(c) That the City owned lands municipally known as 180 Limeridge Road West, Hamilton (Captain Cornelius Park) be declared surplus to the requirements of the City of Hamilton in accordance with the “Procedural By-Law for the Sale of Land”, being By-law No. 04-299 for the lease of land for a term greater than 21 years;

(d) That the Mayor and City Clerk be authorized and directed to execute the Westmount Land Lease Agreement, between The City of Hamilton and the Hamilton Wentworth District School Board, for the purpose of constructing a new recreation facility, to be located at 39 Montcalm Drive (attached as Appendix A to Report 10-010), in a form satisfactory to the City Solicitor; and,

(e) That the Mayor and City Clerk be authorized and directed to execute the Facility Use Agreement, between the City of Hamilton and the Hamilton Wentworth District School Board for the use of the new recreation facility to be located at 39 Montcalm Drive and use of the adjacent City owned park (attached as Appendix B to Report 10-010), in a form satisfactory to the City Solicitor.
4. Recreation Division Restructuring and Re-Organization (CS10067) (City Wide) (Item 8.2)

(a) That Report CS10067, respecting the Recreation Division Restructuring and Re-Organization, be received;

(b) That the report prepared by Performance Concepts and BMA Management, entitled Executive Summary - Organization Structure and Performance Review of the Recreation Division, attached as Appendix A to Report CS10067, be received and remain confidential.

FOR THE INFORMATION OF COMMITTEE:

(a) CHANGES TO THE AGENDA (Item 1)

The Committee Clerk advised of the following changes to the agenda:

(i) Added as Item 4.1 – a Delegation Request from Dyanne Semogas and David Derbyshire, on behalf of the McQuesten Community Planning Team, seeking endorsement of an application (due June 25, 2010) to the Ministry of Health for a Nurse Practitioner led Clinic for the McQuesten Neighbourhood

(ii) Added as item 4.2 – A delegation request from Anne Newbigging, on behalf of the Social Action Committee, Ontario Association of Social Workers, Hamilton Branch, respecting Council’s decision to allot surplus Social Services funds for matters not necessarily related to Social Services

The agenda for the June 16, 2010 Emergency & Community Services Committee meeting was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none declared.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)

3.1 June 2, 2010

The Minutes of the June 2, 2010 Emergency & Community Services Committee meeting were approved, as presented.
(d) DELEGATION REQUESTS (Items 4 and 6)

(i) Dyanne Semogas and David Derbyshire, on behalf of the McQuesten Community Planning Team, seeking endorsement of an application (due June 25, 2010) to the Ministry of Health for a Nurse Practitioner led Clinic for the McQuesten Neighbourhood (Items 4.1 and 6.1)

The delegation request, submitted by Dyanne Semogas and David Derbyshire, on behalf of the McQuesten Community Planning Team, seeking endorsement of an application (due June 25, 2010) to the Ministry of Health and Long-Term Care for a Nurse Practitioner led Clinic for the McQuesten Neighbourhood, was approved.

Dyanne Semogas and David Derbyshire comments included, but were not limited to, the following:

- McQuesten Community Planning Team along with Nurse Practitioners in the community and the McMaster University School of Nursing are working together to apply for a Nurse Practitioner Led Clinic in the East End of Hamilton.

- The proposed Clinic location is the McQuesten Neighbourhood at Oriole Crescent with a Satellite Clinic in Crown Point at the corner of Kenilworth and Main. The catchment area that the Clinics will serve is presently home to approximately 37,941 people (total population 504,559).

- Many social service and health providers in the City have offered support for this proposal and the McQuesten community is poised and prepared for this partnership.

- Census tract data taken from the 2010 Johnston study published in the CODE RED series in the Spectator (April 2010) and other sources demonstrates that the people living in the catchment area experience multiple challenges and obstacles to experiencing health including:
  - Highest rates of Emergency Department usage in Hamilton including high usage rates for child injury, seniors, respiratory disease and cardiovascular disease;
  - High rates of diabetes and obesity;
  - Alcohol and tobacco use among youth that exceeds the provincial average and cannabis and glue/solvent use that is significantly higher than the provincial average;
  - High rates of people who do not have family doctors; and,
  - Proximity to industrial zones and relationship with the Niagara Escarpment, property values are half the provincial average and
a combination of industry and geography that results in poor air quality for residents.

- The Proposed NP Led Clinic: Bringing Health Care to the People will act as a bridge to health using a collaborative and collective approach and will:
  
  o Address the unattached and high users of ED and Walk in Clinics; attend to women’s health, mental health and addictions and new immigrant families;
  o Consist of Interdisciplinary- nursing, midwifery, social services, medicine, rehab, dietary, pharmacy;
  o Provide after hours and weekend care;
  o Combine: fixed appointments and Walk in;
  o Deliver services in collaboration with: Family Health Teams (Hamilton, Academic); Public Health, Midwifery, St. Joseph’s Health Care, Shelter Health Network;
  o Supported by McQuesten Planning Team Partners: HARRRP’s McQuesten Community Centre and Wesley Urban Ministries’ Neighbourhood Centre and STAR; YMCA, Kiwanis Boys’ & Girls’ Club, St. Matthew’s House, Hamilton-Wentworth Police Services, Hamilton-Wentworth Catholic District School Board, Hamilton-Wentworth District School Board, Wesley Urban Ministries, HARRRP, STAR, City of Hamilton Community Services, City KIDZ, City Housing Hamilton, EMS, and Niwasa Head Start; and,
  o Offer an education component: Professional Practice (interdisciplinary: nursing, midwifery, social work, rehab sciences, medicine, psychiatry); and Service Learning.

- The purpose of such an approach is to increase:
  
  o positive health outcomes;
  o use of appropriate level of care for unattached patients;
  o co-location of services: combining social service agency and health care services;
  o collaboration among service providers;
  o integration of service systems;
  o integration of information management systems;
  o effective referral systems;
  o chronic disease management;
  o continuity of care;
  o resident led approaches: access, proactive, culturally sensitive;
  o after hours services;
  o flexibility;
  o a holistic approach; and,
  o opportunities for training providers.
On behalf of the Application Team, David and Dyanne requested a letter of support from the City of Hamilton. They also ask the City to consider joining the application as a funding partner. This could be in the form of rent free support for Clinic space at Oriole Crescent.

The presentation, by Dyanne Semogas and David Derbyshire, on behalf of the McQuesten Community Planning Team, seeking endorsement of an application (due June 25, 2010) to the Ministry of Health and Long-Term Care for a Nurse Practitioner led Clinic for the McQuesten Neighbourhood, was received.

(ii) Anne Newbigging, on behalf of the Social Action Committee, Ontario Association of Social Workers, Hamilton Branch, respecting Council’s decision to allot surplus Social Services funds for matters not necessarily related to Social Services (Items 4.2 and 6.2)

The delegation request, submitted by Anne Newbigging, on behalf of the Social Action Committee, Ontario Association of Social Workers, Hamilton Branch, respecting Council’s decision to allot surplus Social Services funds for matters not necessarily related to Social Services, was approved.

Anne Newbigging’s comments included, but were not limited to, the following:

- The Social Action committee is very concerned about the allocation of surplus from the Ontario Municipal Partners’ Fund and Hamilton’s Share, which amounts to more than $3 million.
- Other municipalities have chosen to augment social assistance measures; including funding of Emergency Medical Services, offsetting community services deficits and increasing funding for social programs.
- Returning the surplus to social services needs would redress the clawback of the increased child benefit allowance, recently introduced by the Province, and deductions that were made to social assistance, including the disappearance of the back to school and winter clothing allowances, when the Ontario Child Benefit began.
- In light of the depth and scope of poverty in Hamilton, the Committee is asking the City to reconsider its decision to allow Council to determine where the money should be spent.

The presentation, by Anne Newbigging, on behalf of the Social Action Committee, Ontario Association of Social Workers, Hamilton Branch,
respecting Council’s decision to allot surplus Social Services funds for matters not necessarily related to Social Services, was received.

Staff was directed to review, on a go forward basis, the feasibility of replenishing the $3.1 million, which has been allocated to capital projects, to the social services budget and report back to the Emergency and Community Services Committee.

Staff was directed to develop a policy, with options, for the use of any year-end surplus of the Ontario Municipal Partnership Funds, and report back to the Emergency & Community Services Committee.

(e) Advisory Committee Minutes (Item 5.2)

The following Advisory Committee Minutes were received:

(i) Arts Advisory Commission Minutes, April 27, 2010 (Item 5.2)

(f) Hamilton Youth Advisory Committee’s Annual Presentation (HYAC10-003) (City Wide) (Item 7.1)

Tahiya Bakht, Michelle Leach and Katie Schotsman, members of the Hamilton Youth Advisory Committee provided the presentation. Their comments included, but were not limited to, the following:

- HYAC is a diverse group of youth, aged 14-24 years, who are passionate about making a difference in their community.
- HYAC’s mandate is to ensure youth are involved in the decisions made within the City of Hamilton and in the community that affect us, our families and friends.
- Addressing issues facing youth, enhancing opportunities for youth and providing a youth voice are the goals of HYAC.
- In addition to fostering positive collaborative relationships between youth and adults and by supporting youth oriented events and programs, HYAC aims to lead by example with integrity, respect and innovation.
- Some of the highlights include becoming better known in the community by collaborating on and attending other youth-led events, developing our logo and website, training and recognition.
- HYAC had a booth at the first annual Unfilteredfacts Summit November 26, 2009; an event organized by Hamilton Public Health Services. The Teen Tobacco Summit and the Party in the Right Spirit Committees joined forces to expose the ‘Unfiltered Facts’ about tobacco, alcohol and the fast food industry.
- HYAC, in collaboration with a local graphic design company focused on branding and began the process of creating a unique and youth friendly identity through the creation of a logo.
• Started developing a unique and youth friendly website. The website is nearly finished and we hope to go ‘live’ during the summer.
• The domain name will be hamiltonyouth.ca. A HYAC member has also volunteered to serve as ‘Webmaster’ and will be supported by adult staff. An official public launch is planned for early in the fall.
• Attended Living Rock’s eighth annual Soupfest, February 2, 2010. Felt by attending this event it was a way to network with other community groups and help support community initiatives that aid peers experiencing poverty and homelessness.
• Hosted its first City wide training opportunity for youth on ‘Influencing Public Policy. It was facilitated by the Youth Advocacy Training Institute (YATI). A total of 17 youth and 3 supporting adults representing five different youth groups in the community attended the training.
• Training offered young people an opportunity to discuss ways to influence public policy. Participants also had the opportunity to hone negotiation skills, learn about the policy cycle and identify 3 best practice policy changes that create supportive environments and healthier communities.
• Attended the Tim Hortons Team Up to Clean Up media launch to encourage other youth groups in Hamilton to take part in this city-wide event.
• Since September 2009, HYAC members have contributed over 380 hours of volunteer time.

• Future Focus:
  o An official launch of the new HYAC website – www.hamiltonyouth.ca.
  o Provide input on the Recreation Department’s proposed subsidy program, to ensure accessibility for youth, and provide recommendations on youth recreational issues.
  o Ongoing promotion of HYAC and its work.
  o Revisit the HYAC Terms of Reference in preparation for recruitment of new members in 2011.
  o Explore possible collaborative opportunities with the McMaster Student Union, the Hamilton Roundtable for Poverty Reduction and other youth organizations.
  o Join the local “Raising the Roof Campaign” and initiate a city wide challenge to youth to purchase a toque in order to raise funds and awareness in the fight against poverty and homelessness.
  o Continue to use Hart’s Ladder of Youth Participation, specifically rungs 6-8, as a guide to gauge and continue to ensure meaningful opportunities for young people to participate, lead and succeed.
  o Continue to nurture a ‘grass roots’ approach to advocacy and an increased HYAC presence in the community.
  o Maintain and update the HYAC website.
  o Continue to be inclusive by attracting and retaining a broad cultural and socio-economically diverse membership.
  o Continue to identify, develop and/or host a series of training and skill development opportunities for youth in Hamilton.
o Continue to recognize and celebrate youth achievement.

The Annual Presentation, provided by the Hamilton Youth Advisory Committee, was received.

(g) Outstanding Business List Amendments (Item 11.1)

The following proposed new due dates, were approved:

(a) Item “M” - Players Paradise Sports Complex – New Hockey Facility in Stoney Creek  
    Current Due Date: June 16, 2010  
    Proposed New Due Date: July 6, 2010 Committee of the Whole

(b) Item “S” - Comprehensive Operational Review of CityHousing Hamilton  
    Current Due Date: June 16, 2010  
    Proposed New Due Date: September 22, 2010

(c) Item “U” – Sports Field Management Strategy  
    Current Due Date: June 2, 2010  
    Proposed New Due Date: September 22, 2010

(h) ADJOURNMENT (Item 13)

There being no further business, the Emergency & Community Services Committee meeting adjourned at 2:29p.m.

Respectfully submitted,

Councillor B. McHattie, Vice Chair
Emergency & Community Services Committee

Stephanie Paparella  
Legislative Assistant  
June 16, 2010
WESTMOUNT LAND LEASE

THIS INDENTURE OF LEASE made in quadruplicate this 1st day of March, 2010.

IN PURSUANCE of the Short Forms of Leases Act, R.S.O. 1990, c. S.11,

BETWEEN:

THE HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD
(herein called the "Landlord")

- and -

CITY OF HAMILTON
(herein called the "Tenant")

OF THE FIRST PART

OF THE SECOND PART

WHEREAS:

1. The Landlord and the Tenant have entered into a Letter of Intent dated the February 1, 2010 which provides, inter alia, for the provision by the Tenant to the residents of the City of Hamilton of a Recreational Community Centre (the “Community Centre”) to be located on the lands hereinafter described;

2. The Landlord has agreed to lease to the Tenant and the Tenant has agreed to take a lease from the Landlord of the lands described in Schedule "A" hereto, and municipally known as 39 Montcalm Drive in Hamilton, Ontario (herein called the "Lands");

3. The Tenant has expressed the desire to construct a building on the said Lands, which building and any future buildings erected on the Lands during the term of this Lease or any extension together with the improvements and appurtenances of such building or buildings are herein called the "Building"; and

4. For further certainty and without limitation, at the end of the Term, whether by expiry or earlier termination, the Building shall be owned solely and outright by the Landlord.

NOW THEREFORE in consideration of the rents reserved and the covenants and provisos herein contained on the part of the Tenant, the Landlord hereby leases to the Tenant the Lands.

1. DEMISE AND TERM

(a) In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant, and the Tenant rents from the Landlord, the lands described in Schedule "A" hereto, and municipally known as 39 Montcalm Drive in Hamilton, Ontario (herein called the "Lands"). The Tenant accepts the Lands on an "as is" basis. It is acknowledged and agreed by the parties that the soccer field shall be removed from the Lands by the Tenant, with no obligation for its replacement.
To have and to hold the Lands, subject as herein provided and subject to the terms and conditions set forth herein for the term of ninety-nine (99) years commencing on the 1st day of March, 2010, and ending on the 28th day of February, 2109 (hereinafter the “Term”).

At the expiry of the Term or of any extension thereof or other sooner termination hereof, the Tenant agrees to quit the Lands, the Building and any new building and surrender, yield and deliver up the Building and other improvements which may be on the Lands at that time and all equipment, machinery, fixtures and other facilities used in connection therewith (save such fixtures as are herein specifically excepted) free and clear of all encumbrances, and in a state of good repair, order and condition as required under the provisions of Section 5(d) hereof, subject only to reasonable wear and tear to the Building commensurate with its age and permitted use hereunder and all the right, title and interest thereto of the Tenant shall cease and thereupon vest in the Landlord.

It is the intention of the parties hereto that this shall be a net lease and that the rent provided to be paid to the Landlord hereunder shall be absolutely net to the Landlord and that all costs, expenses and obligations of every kind and nature whatsoever relating to the lands and premises shall be paid by the Tenant, including but not limited to all realty taxes, local improvements, development charges, sewage and drainage charges, if applicable, and all charges and levies utilized for municipal services of every nature and kind, said municipal services to include, but not to be limited to water, education, sanitary sewers, storm sewers, hydro and gas.

Subject to O. Reg. 444/98 of the Education Act, R.S.O. 1990, c. E.2 (herein called “Regulation 444”), and any prior ranking preferred agency as defined therein, unless Regulation 444 is repealed, the City shall have the first right to purchase the Lands at the then fair market value.

Without in any way limiting the generality of the foregoing and in addition thereto, the Tenant shall be responsible for and shall pay for all curb cuts, the removal of top soil, compacting grading and landscaping at the front of the lot required by any relevant municipality and hereby accepts the said Lands in their current condition and state.

The Tenant shall pay to the Landlord a nominal rent of One Dollar ($1.00) per annum for the Term of this Lease. Rent shall be payable on the 1st day of March, 2010 and on or before the 1st day of January each year thereafter for the Term of this Lease (“Rent”).

It is the intention of the parties hereto that this shall be a net lease and that the Rent provided to be paid to the Landlord hereunder shall be absolutely net to the Landlord and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Lands and Building shall be paid by the Tenant, including but not limited to all realty taxes, capital taxes, local improvements, development charges, sewage and drainage charges, if applicable, and all charges and levies utilized for municipal services of every nature and kind, said municipal services to include, but not to be limited to water, sanitary sewers, storm sewers, hydro and gas.
Without in any way limiting the generality of the foregoing and in addition thereto, the Tenant shall be responsible for and shall pay for all curb cuts, the removal of top soil, compacting grading and landscaping at the front of the lot required by any relevant municipality and hereby accepts the said Lands in their current condition and state.

4. **INTENTIONALLY DELETED**

5. **TENANT'S COVENANTS**

The Tenant covenants with the Landlord as follows:

(a) To Pay Rent - to promptly pay all Rent and any other payments due under this Lease in lawful money of Canada.

(b) Taxes and Assessments - to pay and discharge, when they fall due, all taxes, including all charges for local improvements, development charges, assessments and other charges, rates, duties, licence fees or levies of any kind or nature whatsoever which may be made, levied or imposed on the Lands or the Building or any structures or improvements presently situate on the Lands or upon any present or future fixtures or equipment or upon the Landlord on account thereof (herein called without limitation, "Property Taxes"). The Tenant shall have the right and privilege of appealing assessments or of applying for a reduction of any of the Property Taxes, provided that it shall first either pay the Property Taxes under the protest or furnish to the Landlord satisfactory security for their payment by bond or otherwise in case of failure of such appeal or application. In the case of assessments to Municipal Property Assessment Corporation only, the Tenant may appeal assessments in its own name or if required and upon agreeing to indemnify the Landlord in respect of such action and all costs of the Landlord relating thereto, in the name of the Landlord and the Landlord hereby agrees to join in such proceedings. If and so often as the Tenant shall neglect or omit to pay the Property Taxes, the Landlord may, but shall not be obliged to pay them and may there upon charge them to the Tenant together with interest on such amount as set out in Section 5 (a), and the Tenant hereby covenants and agrees to pay such amount to the Landlord forthwith upon receipt from the Landlord of a notice stating the amount paid by it and the date of payment and the Tenant agrees that all such amounts paid by the Landlord shall be recoverable and in arrears under the terms of this Lease;

(c) Compliance with Laws

   (i) to comply with and conform to the requirements of every applicable statute, law, by-law, regulation, requirement and order from time to time in force during the term hereof and any extension thereof affecting the removal of any encroachment or the condition, maintenance, use or occupation of the Lands or the Building;

   (ii) to use the Building or Lands in conformity with all of the requirements of the zoning by-laws and any other municipal or governmental regulations which may affect the Lands; and

   (iii) to comply with all police, fire and sanitary regulations imposed by any municipal or provincial or federal authorities or recommendations or requirements made by fire insurance underwriters, and observe and obey all municipal and governmental
regulations governing the conduct of any businesses carried out on the Lands, Building and Construction or with respect to the use of the Lands and/or Building.

In so doing, the Tenant shall make any necessary alterations, repair, or addition to or deletion from any part of the Building or any equipment or other facility used in connection with or appurtenant to the Lands or the Building; PROVIDED that the use of any part of the Lands or Building as a non-conforming use under any applicable zoning by-law shall not be a violation of the provisions of this Section 5(c);

(d) Maintenance and Repairs - at the Tenant's expense, during the term of this Lease and any extension thereof

(i) to operate and maintain the Lands, the Building and the equipment, machinery and other facilities at any time situated thereon and used in connection therewith and to keep them at all times in good order and condition commensurate with a municipal recreation and aquatic facility; and at the Tenant's expense, to make all repairs, interior and exterior, structural and non-structural, foreseen or unforeseen, required to keep the Building and the said equipment, machinery and other facilities in good order and condition as aforesaid; such repairs to be in all respects substantially equal in quality and workmanship to the original work and material in the Building and to meet the requirements of municipal and government authorities and fire insurance underwriters; and

(ii) at all times to keep and maintain the sidewalks, area ways and rights of way adjacent to the Building clean and free from rubbish, ice, snow and the like;

(e) Waste - not to suffer any waste or injury to the Lands, the Building or any part thereof and not to use or occupy the Lands, the Building or any part thereof or permit them to be used or occupied for an unlawful purpose;

(f) Alterations, New Structures - except as herein provided, not to make, construct or permit to be made or constructed, any addition, change, improvement or structural alteration to the Building or construct a new building on the Lands without obtaining the prior written consent of the Landlord thereto, which may not be unreasonably withheld provided the Tenant has fully complied with the terms, covenants and conditions of this Lease. Before requesting the Landlord's approval for construction, addition, change, improvement or structural alteration to the Building or any other building or structure (hereinafter collectively referred to as the "Construction"), the Tenant shall submit to the Landlord detailed plans and specifications, in duplicate, of the Construction, one of which duplicate copies may be retained by the Landlord. The Construction shall meet the requirements of municipal, provincial and federal governments, other authorities and/or fire insurance underwriters;

(g) Replacement or Repair of Damaged Building - within one hundred twenty (120) days from the happening of the complete or partial destruction of or damage to the Building, the Tenant shall begin the repair or replacement of such damage or destruction and with due diligence shall repair or reconstruct the Building or any new building or replace the Building or any new building with another building or buildings of the same type and character and of equal value to that so damaged or destroyed. Such repair, replacement or reconstruction shall be done substantially in compliance with Article 10. After
completing the said repair, reconstruction or replacement, the balance of any insurance proceeds or other proceeds available by reason of the destruction or damage shall belong absolutely to the Tenant. Should the cost of repair exceed insurance proceeds, the excess cost of repair shall be borne solely by the Tenant. The Tenant shall not be entitled to surrender possession of the Lands nor demand any abatement or reduction of Rent or other charges payable under this Lease by reason of any complete or partial destruction of or damage to the Building:

(h) View State of Repair - to permit the Landlord or its duly authorized agents at all reasonable times to enter and view the state of repair to the Building or any new buildings;

(i) Nuisance - not to do or omit upon the Lands or the Building or permit to be done or omitted, anything which shall be or result in a nuisance;

(j) Construction Liens - to promptly pay all its contractors or materialmen when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of, repairs, alterations or additions to the Building and do all things necessary in order to prevent any construction, mechanics or other liens or orders for the payment of money to be registered against the Lands or Building, if applicable, and should any lien be made or filed to discharge same forthwith (after notice thereof is given to the Landlord) at the Tenant’s expense. If the Tenant shall fail to cause any such lien to be discharged as aforesaid, then, in addition to any other right or remedy of the Landlord, the Landlord may (but shall not be so obligated) discharge same by paying the amount claimed to be due into Court or directly to any such lien claimant and the amount so paid by the Landlord and all costs and expenses (including solicitors’ fees, on a substantial indemnity basis) incurred for the discharge of such lien, shall be due and payable by the Tenant to the Landlord on demand and shall bear interest at fifteen percent (15%) per annum on the unpaid balance (calculated monthly);

This shall not prevent the Tenant from retaining any amounts claimed due which the Tenant’s architect has not certified to be due, or which are properly and reasonably retained to secure the performance of any work or the correction of any defect or which, in the opinion of the Tenant’s architect, are reasonably retained in anticipation of damages arising from any contractor’s default, or which are required to be retained under the provisions of the Construction Lien Act (Ontario).

(k) Utility Charges - to pay promptly all charges or costs for water, electricity and other utilities of every nature and kind and all charges or costs for services used or consumed in and any other charges or costs levied or assessed on or in respect of services supplied to the Lands and Building and all similar costs. In no event is the Landlord liable for, nor has the Landlord any obligation with respect to, an interruption or cessation of or a failure in the supply of any utilities, services or systems in, to or serving the Lands or Building;

(l) Use of Building - not to permit any space in the Building to be used for any purposes other than those provided for hereunder and which are not otherwise generally permitted in a municipal recreation and aquatic facility; and

(i) the Tenant shall use the space on the Lands and in the Building in carrying out those activities for the purpose as described at Schedule "B" attached to this Lease and for no other purpose;
(ii) the Tenant shall at all times operate the Building as a municipal recreation and aquatic facility.

(m) Signs - Not to inscribe, paint or affix any sign, advertisement or notice on any part of the outside of the Building whatsoever unless of such manner, color, size and style and in such places upon said Building are within Tenant's standards, and furthermore, the Tenant, on ceasing to be the Tenant of the Lands or Building, will before removing its goods and fixtures from the said Lands and Building, cause any sign as aforesaid to be removed at its own expense and in a workmanlike manner to the satisfaction of the Landlord and any such sign shall conform with governmental requirements.

6. LANDLORD'S COVENANTS

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment - for quiet enjoyment.

(b) Easements - that if its consent is required in connection with the granting of easements for water, gas, steam, electricity, telephone, sewers or storm drains, such consent will not be unreasonably withheld.

(c) Acquisition of Certain Assets - the Landlord acknowledges that in certain instances during construction it may act as agent for the Tenant, but in all regards, the title to such acquired leasehold improvements, structures shall be vested in the Tenant subject only to the Landlord's reversionary interest under this Lease.

(d) The Landlord shall provide all consents, authorizations and approvals, and enter into all usual and necessary agreements as may be required for such purpose including as to any re-zoning, 'variances and site plan approvals which are sought by the Tenant for the purpose of constructing and operating the Building or other improvements on the Lands, so long as the aforesaid do not result in any expense or obligation of the Landlord in connection with such consents, authorizations and approvals in respect of which the Landlord is not fully indemnified, and provided the Landlord has received from the Tenant such security, if any, for such liability which the Landlord, acting reasonably, determines is required, in such form, amount and at such times as the Landlord may reasonably require, and so long as the improvements contemplated by such agreements are in compliance with the terms hereof.

7. SURRENDER, SUB-LETTING AND ASSIGNMENT

It is hereby agreed as follows:

(a) Surrender of Lease - except as herein provided, no surrender of this Lease by the Tenant shall be valid unless accepted in writing by the Landlord.

(b) Sub-Lease - the Tenant named at the commencement of this Lease upon the prior written consent of the Landlord may enter into a sublease(s) provided that the sub-tenant(s) enters into a sublease which continues the obligations under this Lease.
(c) Assignment by Landlord - to not convey or assign its interest in the Lands or this Lease without the prior written consent of the Tenant (which consent may not be unreasonably withheld). Should the Landlord convey or assign its interest in the Lands or this Lease, or otherwise divest itself of title to the Lands, it shall not be relieved of all such obligations under this Lease after the date of delivery of any such conveyance or assignment.

(d) Assignment by Tenant – to not convey or assign its interest in the Lands or this Lease without the prior written consent of the Landlord (which consent may not be unreasonably withheld). Should the Tenant convey or assign its interest in the Lands or this Lease, it shall not be relieved of all such obligations under this Lease after the date of delivery of any such conveyance or assignment.

8. RENEWAL AND OVERHOLDING

(a) The Tenant may be granted the right to renewal for an additional term after the initial Term of this Lease on the same terms (including rent) as the initial Term, the terms of the renewal (including the length of the term of the renewals) shall be contained in a bona fide written offer received by the Landlord from the Tenant. Such written offer shall be submitted to the Landlord in accordance with the notice provisions in this Lease and at least thirty-six (36) months before the date on which this Lease would otherwise expire. The Landlord shall notify the Tenant of acceptance or refusal within thirty (30) days of receipt. The Landlord shall determine whether to accept or refuse the offer acting reasonably. Upon acceptance this Lease shall be renewed for such period and on such terms and conditions then agreed, otherwise upon refusal of renewal by the Landlord this Lease shall be terminated at the end of the current Term.

(b) If at the expiration of the initial Term or any subsequent renewal or extension thereof, the Tenant shall continue to occupy the Lands without further written agreement, there shall be no tacit renewal of this Lease, and the tenancy of the Tenant thereafter shall be from month to month only, and may be terminated by either party on one (1) month’s notice. Rent shall be payable in advance on the first day of each month equal to the sum of one hundred and twenty-five percent (125%) of the monthly installment of Rent payable and all terms and conditions of this Lease shall, so far as applicable, apply to such monthly tenancy.

9. LANDLORD’S RIGHT OF TERMINATION

(a) Provided that in the event the Tenant does not complete the construction of the Building within thirty-six (36) months of the commencement of the term of this Lease (the “Construction Period”), the Landlord reserves the right, at its option, to terminate this Lease on six (6) months' prior written notice to the Tenant and any Building or improvements then on the Lands shall, at the option of the Landlord, either become the property of the Landlord or in the alternative, the Landlord may request the Tenant and the Tenant shall thereupon remove such improvements, encumbrances, and/or Building at the sole expense of the Tenant and repair any damage caused thereby.

(b) Notwithstanding Section 9(a), there shall be an extension of time for the construction of the Building if the Tenant:
(i) has been delayed in constructing the Building by reason of Force Majeure and the delay(s) render it unlikely or uncertain that the Building will be substantially completed by the end of the Construction Period; and

(ii) has used all reasonable diligence to overcome the delays and has proceeded diligently with the construction of the Building to the extent possible.

Provided the foregoing conditions are satisfied then the time for compliance with Section 9(a) shall be extended by a period not longer than the length of the delay imposed by the Force Majeure.

10. CONSTRUCTION OF BUILDING AND SUBSEQUENT CONSTRUCTION

(a) It is the intention of the parties hereto that the Tenant is to erect the Building on the Lands at a total cost of not less than TWENTY MILLION DOLLARS ($20,000,000.00). It is further agreed that the Building shall be constructed and located entirely within the boundaries of the Lands and shall not be connected in any manner to, or be constructed or located partially on, any lands adjoining or abutting the Lands. The Landlord and Tenant agree that the Lands shall support a complete project and shall not be part of or connected with a larger project or development on lands not forming part of the Lands. The Tenant shall construct and complete the Building expeditiously and in good and workmanlike manner.

(b) Before commencing excavation or any work on the Lands for the construction of the Building, the Tenant shall have:

(i) furnished proof of the insurance required by Section 10(f);

(ii) obtained the approval of the Landlord and shall have entered into a construction contract for that part of the construction which is to be commenced; and

(iii) obtained from the contractor the indemnity, insurance and performance bonds required by the contract.

(c) The Tenant shall perform and comply with the following covenants and requirements in the construction of the Building:

(i) the Building shall be constructed in all respects in accordance with the initial plans provided in Schedule “C” (“Initial Plans”), subject to such changes as may be required by governmental authorities or otherwise as approved in writing by the Landlord, such approval not to be unreasonably withheld or delayed;

(ii) all necessary building permits shall be obtained and all municipal by-laws and legal requirements pertaining to the conduct of the work shall be complied with;

(iii) the construction work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease;

(iv) any contractor engaged on the work shall be required to observe all provisions of its contract as approved by the Landlord, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract;
(v) the Landlord and its agents and engineers shall at all times have the right to inspect the work and to protest to the Tenant or the Tenant’s architect any default or non-compliance with the construction contract or this Lease, and the Tenant shall forthwith deal with the protest and remedy any default or non-compliance;

(e) The Tenant shall obtain or shall cause its contractor or contractors to obtain prior to the commencement of construction of the Building, and shall maintain and keep in force until the insurance required under Article 13 has been obtained, the following policies of insurance:

(i) Wrap-up Liability insurance for a limit of five million dollars ($5,000,000) for Third Party Bodily Injury, Personal Injury and Property Damage and including but not limited to Non Owned Automobile. Such insurance shall be in the name of the Contractor and shall name the Contractor’s subcontractors, agent, architects, landscape architects, engineers, consultants, planners, project managers and the Landlord and Tenant as additional insureds thereunder;

(ii) Builders Risk (All Risks, including but not limited to Earthquake, Flood and Sewer Back up) Insurance to cover the subject property (the “Subject Property”) which coverage shall be for the full amount of the Total Contract Price. The Subject Property means the Building, Lands, and Community Centre. Coverage shall include a provision for soft costs, the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum and shall include damage to the Work caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the Work. Coverage shall be endorsed to grant permission to occupy and shall be endorsed to cover the interests of all parties, including the Tenant and Landlord and all contractors and subcontractors; and

The proceeds of insurance which may become payable under any policy of insurance obtained pursuant to clause 10(e)(ii) shall be paid by the Landlord and/or the Tenant to the Trustee in accordance with Section 13(f).

11. NOTICE OF LEASE

(a) Neither the Tenant nor anyone on the Tenant’s behalf or claiming under the Tenant (including any transferee) shall register in full this Lease or any transfer against the Lands. The Tenant may register a notice or caveat of this Lease provided that:

(i) a copy of this Lease is not attached; and

(ii) the Landlord gives its prior written approval of the notice or caveat.

(b) Upon the expiration or earlier termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat.
12. **LENDERS’ RIGHTS**

(a) Notwithstanding any other part of this Lease, the Tenant shall not create any lien, mortgage, charge (including by way of assignment or sublease), conditional sale agreement or other encumbrance in respect of this Lease, save and except for a charge with the Landlord's consent.

13. **INSURANCE AND INDEMNITY**

(a) Tenant Indemnity - The Tenant covenants and agrees to indemnify, defend and save the Landlord harmless against any and all liabilities, claims, actions, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever (including, without limitation, counsel and solicitor's fees on a substantial indemnity basis, reasonable costs of professional advisors, consultants and experts) arising from:

(i) any breach, violation or non-performance of any covenant, condition or agreement in this Lease on the part of the Tenant to be observed or performed;

(ii) any damage to property of any person at, in, on or upon the Lands or Building or as a result of acts occurring on the Lands or Building, except where such damage has been caused by the negligence or other fault of the Landlord; and

(iii) any injury to or the death of any person or persons occurring at, in, on or upon the Lands or Building or as a result of acts occurring on the Lands or Building, except where such injury has been caused by the negligence or other fault of the Landlord.

(b) Landlord Indemnity - Except in the case of Tenant's own negligence and/or willful misconduct or that of its agents, employees, contractors, invitees or licensees, Landlord shall protect, defend and indemnify, and save Tenant, his agents and employees harmless from any and all liability, damage, expense, cause of action, suits, loss, costs, penalties, attorneys fees, claims or judgments arising from any injury or loss of life to the person of Tenant or other persons or damage to property caused by Landlord’s negligence and/or willful misconduct or that of its agents, employees, contractors, invites or licensees.

(c) Tenant’s Insurance - The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:

(i) Property Insurance All Risk to insure property of every description (including the building). Coverage shall include but not be limited to Earthquake, Flood and Sewer Backup and shall include extra costs related to applicable Bylaws. Such insurance shall add the Landlord as an additional insured as their interest may appear. Coverage to be computed upon a replacement cost basis;

(ii) Commercial General Liability insurance, including personal liability, contractual liability, all risk tenants’ legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with inclusive limits of at least five million dollars ($5,000,000) per occurrence and ten million dollars ($10,000,000) in the aggregate;
(iii) Boiler and Machinery insurance Comprehensive Form (including but not limited to Earthquake, Flood and Sewer Backup) on a blanket repair and replacement basis, with limits for each accident in an amount not less than the full replacement costs of the property, with respect to any boilers and machinery upon the Lands or relating to or serving the Lands, and such insurance shall add the Landlord as an additional insured as their interest may appear; and

(iv) any other form of insurance with whatever limits the Tenant, the Landlord, acting as a prudent owner, or any mortgagee reasonably requires from time to time, in such form and amounts and for risks against which a prudent tenant under similar circumstances would insure.

(d) Insurers - all contracts of insurance maintained under the provisions of this Lease shall be with a company or companies licensed to do business within the province in which the Lands are located and ordinarily engaged, inter alia, in the business of insuring against the risks herein described.

(e) Evidence of Insurance - the Tenant shall furnish the Landlord with certificates or other acceptable evidence of all required insurance promptly upon request and in any event within thirty (30) days from the execution of this Lease. Such insurance shall show the Landlord as additional insured and shall provide for a waiver of subrogation among insureds, and liability insurance shall provide for severability of interests and cross liability among insureds. All proceeds of any insurance shall first be used by the Tenant for the costs of repairing, reconstructing or replacing, as the case may be, the damaged or destroyed portions of the Building to the standard set out herein, except as otherwise provided for in this Lease.

(f) Insurance Trustee - Where a partial or complete destruction of the Building occurs and the Tenant rebuilds, the following procedures shall apply:

(i) the insurance proceeds shall be paid by the Tenant and/or the Landlord to a trustee (the “Trustee”) jointly named by the Landlord and the Tenant and any mortgagee, and the Trustee shall be expressly instructed to act on behalf of both the Landlord and the Tenant and any mortgagee according to their interests. The Trustee shall be instructed to invest the insurance proceeds, insofar as possible, with a bank or trust company so as to earn interest pending their distribution as contemplated by this Section 13(f). Work-in-progress shall be paid for in installments as progress payments out of the insurance proceeds, and provision shall be made to ensure that no increase in the cost over the amount of the original estimate shall be the responsibility of the Landlord or the Trustee, so that the Trustee at all times retains in its hands sufficient insurance proceeds to pay for the estimated cost of repair outstanding at the date it makes any progress payment;

(ii) before any contract having a value in excess of $500,000.00 is entered into by the Tenant for the carrying out of any repair work, copies of the estimates for any work and the contracts for the completion of the work shall be submitted to the Trustee, and it shall distribute such copies to the Landlord, the mortgagee and the Tenant. Such contracts shall be deemed to be approved unless notice to the contrary is
delivered to the Trustee within fourteen (14) business days of receipt of the contract from the Trustee;

(iii) any progress payments to be made under this Section 13(f) by the Trustee shall not be made without the submission of a statement, certified by the architect or engineer of the party to whom the payments are to be made, stating the estimated amount required to complete the work or repair at the date of the certificate, the amount owing on work already done, and the amount of any payments made at that date for work already done, and verifying the standard and quality of the work already done, and the Trustee shall be required to retain in its hands, at the date of any payment, an amount sufficient to pay the estimated outstanding cost of completion, even if that has the effect that the payment made becomes less than the amount certified to be due;

(iv) in making any payment under this Section 13(f), the Trustee shall have regard to construction lien or similar legislation applicable in the province in which the Lands are located and shall retain within its control for the period specified in such legislation the amount of any hold-back required;

(v) the fees and expenses of the Trustee shall be borne by the Tenant and shall be paid, to the extent available, out of the insurance moneys held by the Trustee;

(vi) in the case of any dispute as to the terms of any contract or the amount of any estimate or any matter relating to the actual work or repair, such dispute shall be decided by an Expert pursuant to the terms hereof; and

(vii) upon completion of the work of restoring and repairing the Building and payment in full therefore by the Tenant, the Landlord shall, upon receipt of proof that such work has been paid for in full and that there is no outstanding lien claim, release to the Tenant any insurance moneys then remaining and in the possession or control of the Trustee and shall so authorize the Trustee.

The parties agree to periodically discuss amendments to the insurance requirements under this Lease to ensure that these requirements comply with current insurance industry standards. Where the parties agree on such amendments they shall set them out in writing.

14. DEFAULT

Any of the following constitutes an Event of Default under this Lease:

(a) the Tenant fails to pay any Rent or other amount due under this Lease on the day or dates appointed for the payment thereof and fails to pay the same, with interest, within fifteen (15) days of written notice to the Tenant of such failure;

(b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant and does not, following notice of such failure by the Landlord either:
(i) if the matter complained of in such notice is capable of being remedied by the payment of money, correct the matter complained of within fifteen (15) days of written notice to the Tenant of any such failure; or

(ii) if the matter complained of in such notice is not capable of being remedied by the payment of money:

(A) remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease) of written notice to the Tenant of any such failure;

(B) if such breach cannot reasonably be remedied within thirty (30) days or such shorter period, commence to remedy such breach within thirty (30) days of written notice to the Tenant of any such breach and thereafter proceed diligently to remedy such breach; or

(C) notify the Landlord within thirty (30) days after the giving of such notice by the Landlord that the Tenant disputes the matters complained of in such notice, in which case, unless otherwise agreed between the Landlord and the Tenant, such issues shall be determined in accordance with Article 16; if such determination shall be adverse to the Tenant, wholly or in part, the Tenant shall, within thirty (30) days after such determination shall have been made, remedy such breach.

(c) the Landlord fails to observe or perform any of the terms, covenants or conditions of this Lease to be observed or performed by the Landlord and does not, following notice of such failure by the Landlord either:

(i) if the matter complained of in such notice is capable of being remedied by the payment of money, correct the matter complained of within forty-five (45) days of written notice to the Landlord of any such failure; or

(ii) if the matter complained of in such notice is not capable of being remedied by the payment of money:

(A) remedy such breach within sixty (60) days (or such shorter period as may be provided in this Lease) of written notice to the Landlord of any such failure;

(B) if such breach cannot reasonably be remedied within sixty (60) days or such shorter period, commence to remedy such breach within sixty (60) days of written notice to the Landlord of any such breach and thereafter proceed diligently to remedy such breach; or

(C) notify the Tenant within forty-five (45) days after the giving of such notice by the Landlord that the Landlord disputes the matters complained of in such notice, in which case, unless otherwise agreed between the Landlord and the Tenant, such issues shall be determined in accordance with Article 16; if such determination shall be adverse to the Landlord, wholly or in part, the Landlord shall, within forty-five (45) days after such determination shall have been made, remedy such breach.
15. **REMEDIES UPON DEFAULT**

(a) If and whenever an Event of Default by the Tenant occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

(i) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant. No notice of the Landlord’s intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and 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. The Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith plus fifteen percent (15%);

(ii) 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 Lands) plus fifteen percent (15%); and

(iii) to recover from the Tenant the full amount of the current month’s Rent together with the next three months’ installments of Rent, all of which shall immediately become due and payable as accelerated Rent.

(b) Distress - Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Lands at any time shall be exempt from levy by distress for Rent in arrears or any other Event of Default, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress. the Tenant hereby irrevocably waives and renounces the benefit of any present or future legislation taking away or diminishing the Landlord's right to distrain for Rent or other amounts owing under this Lease.

(c) 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 Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord plus fifteen percent (15%).

(d) 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. The express provisions contained in this Lease 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 common law.
(e) If and whenever an Event of Default by the Landlord occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Tenant shall have the following rights and remedies, which are cumulative and not alternative:

(i) to terminate this Lease by notice to the Landlord, provided that the Event of Default renders the Building unusable for the purposes of the Tenant under this Lease;

(ii) to remedy or attempt to remedy any default of the Landlord under this Lease for the account of the Landlord. No notice of the Tenant’s intention to remedy or attempt to remedy such default need be given to the Landlord unless expressly required by this Lease, and the Tenant shall not be liable to the Landlord for any loss, injury or damages caused by acts of the Tenant in remedying or attempting to remedy such default. The Landlord shall pay to the Tenant all expenses incurred by the Tenant in connection therewith plus fifteen percent (15%); and

(iii) to recover from the Landlord all damages, costs and expenses incurred by the Tenant as a result of any default by the Landlord plus fifteen percent (15%).

(f) Costs - The Landlord shall pay to the Tenant all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Tenant in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Landlord under this Lease, or in respect of which the Landlord has agreed to insure or to indemnify the Tenant plus fifteen percent (15%).

(g) Remedies Cumulative - Notwithstanding any other provision of this Lease, the Tenant 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 Landlord, 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. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Tenant by statute or common law.

16. SETTLEMENT OF DISPUTES

(a) Where any dispute arises between the parties hereto as to any matter contemplated by or arising from the terms of this Lease, proceedings may be commenced by one party (the “Initiating Party”) giving notice to the other party (the “Responding Party”) specifying the matter in dispute and requesting that it be resolved. Within ten (10) days of receipt of such notice, if the dispute has not been resolved, the parties shall meet and shall consider whether they wish to have the dispute in question resolved by a person generally recognized in the business community as having familiarity with and expertise in the matter which is the subject of the dispute (an “Expert”). At such meeting, if either party is of the view that the dispute should be resolved by an Expert, it may give written notice to the other party to that effect, listing its choice of Expert. If, within twenty (20) days after delivery of such written notice, the parties are able to agree to the use of an Expert for the resolution of the matter in dispute, to the person or persons to be the Expert(s) for such purpose, and as to the time period within which the Expert(s) is (are) to determine such matter, the matter shall be resolved on such basis and the decision of such Expert(s) shall
be final and binding on the parties who shall bear equally the costs related to the procedures.

(b) If the parties do not agree to any or all of such items within the prescribed time period, the dispute shall not be resolved by an Expert but shall rather be determined by arbitration in accordance with Sections 16(c) and 16(d) hereinbelow.

(c) The parties shall attempt to agree upon an arbitration procedure within fifteen (15) days after the expiry of the twenty (20) day period referred to in Section 16(a) above. If the parties cannot agree upon an arbitration procedure within such fifteen (15) day period, either party may, by written notice to the other party, designate an arbitrator. The other party shall, within fifteen (15) days thereafter, be entitled to appoint an arbitrator by written notice to the first party, and the two (2) arbitrators so appointed shall meet and select a third arbitrator acceptable to both of them. If the two (2) arbitrators so appointed are unable to agree upon a third arbitrator, then the Initiating Party shall make an application to the appropriate court pursuant to the Arbitration Act, 1991 (Ontario) S.O. 1991, Chapter 17, as amended ("Arbitration Act") for the selection of a third arbitrator, and the provisions of the Arbitration Act shall govern such selection. If the other party fails to appoint an arbitrator within the fifteen (15) day period, then the arbitration will proceed before the arbitrator appointed by the first party who will act as a sole arbitrator.

(d) When the conditions set out in Section 16(c) have been fulfilled, the resulting arbitration panel shall thereupon proceed to set out the procedure for the arbitration, shall hear the submissions of the parties and shall attempt to render a decision within thirty (30) days after the appointment of the final arbitrator or such longer period thereafter as may be required. The decision of a majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, and that decision shall be final and binding upon the parties and not subject to appeal. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both of the parties; however, each party shall bear its own witness and counsel fees.

17. EXPROPRIATION

If, at any time during the Term, any public body or paramount authority shall take or expropriate the whole or a portion of the Lands and Building, then the following provisions shall apply:

(a) the Landlord, the Tenant, and any mortgagee may exercise fully all the rights, remedies and claims for compensation which each may have under the applicable legislation. The Landlord and the Tenant shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation, shall not claim compensation on any basis inconsistent with this Lease, and shall afford reasonable co-operation to each other in the prosecution of any proper separate claims. The Landlord and the Tenant shall cooperate with each other regarding any expropriation of the Lands or any part thereof so that each receives the maximum award to which it is entitled at law; and

(b) if such expropriation or compulsory taking does materially affect the Tenant's use or enjoyment of the Lands, then the Tenant may elect to terminate this Lease by notice to the Landlord within ninety (90) days of the notice of the expropriation and the Term shall terminate on the date upon which the expropriating or taking authority requires possession
of the lands so expropriated or taken. In such case, the Landlord shall be entitled to receive the entire compensation award or settlement, whether fixed by agreement or otherwise, save and except for the portion thereof that is specifically awarded or allocated to the Tenant in respect of the right of the Tenant to occupy and use the Building for the balance of the Term.

18. **GENERAL PROVISIONS**

(a) Mortgage or Disposition of Reversion - nothing in this Lease contained shall preclude the Landlord from mortgaging or disposing of the reversion in the Lands.

(b) Notices - all notices to be given pursuant to this Lease shall be sufficiently given if mailed, prepaid and registered, in the case of the Landlord, addressed to it at:

City of Hamilton  
City Hall  
71 Main Street West  
Hamilton, ON, L8P 4Y5  
**Attention:** City Clerk  

in the case of the Tenant, addressed to the Tenant at:

The Hamilton-Wentworth District School Board  
Education Office (Main Office)  
100 Main Street West, P.O. Box 2558  
Hamilton, ON L8N 3L1  
**Attention:** Superintendent of Business and Treasurer

unless either party gives notice to the other of a change of address by registered mail. The date of receipt of any such notice shall be deemed to be seventy-two (72) hours after such mailing.

Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

(c) Entire Agreement - there are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein, and this Lease constitutes the entire agreement duly executed by the parties hereto, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties hereto, and shall be interpreted according to the laws of the Province of Ontario.

(d) Acknowledgment of Performance of Agreement - each party shall, at the request of the other made at any time after the then performed obligations of the other under this Lease have been fully performed, give to the other an acknowledgment to that effect.
(e) Successors and Assigns - the rights and liabilities of the parties shall enure to the benefit of their respective heirs, executors, administrators, successors and assigns, subject to any requirement for consent by the Landlord hereunder.

(f) Severability - if any Article or Section or part or parts of an Article or Section in this Lease is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in full force and effect and shall be binding on the Landlord and the Tenant as though such Article or Section or part or parts thereof had never been included in this Lease.

(g) Captions and Headings - the captions appearing at the headings of the Articles or Sections in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or any of its provisions.

(h) Non-waiver - any condoning, excusing or overlooking by a non-defaulting party of any default, breach or non-observance by the defaulting party at any time or times of any covenant, proviso or condition herein contained shall not operate as a waiver of the non-defaulting party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, nor defeat or affect in any way the rights of the non-defaulting party hereunder in respect of any such continuing or subsequent default, breach or non-observance and all rights or remedies herein contained on the part of the non-defaulting party shall be deemed to be cumulative and not alternative. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to the Landlord hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Tenant hereby waives the benefit of any statutory or other right in respect of abatement or set off in its favour at the time hereof or at any future time.

(i) Force Majeure - notwithstanding any other provision contained herein, in the event that either the Landlord or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds (such reasons collectively referred to as “Force Majeure”), then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section shall not under any circumstances operate to excuse the Tenant from prompt payment of Rent and/or any other charges payable under this Lease.

(j) Name of Building – the name of the Building shall be determined by the Tenant.

(k) Parking – the Landlord acknowledges that the Tenant shall have exclusive use of any parking lot on the Lands.

(l) Early Termination - the Tenant shall have the right to terminate this Lease at any time and for any reason, with or without cause, upon at least one (1) year's written notice to the Landlord and without any compensation to the Landlord whatsoever.
(m) Further Assurances - each of the parties shall, from time to time, at its own expense and costs, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Lease.

***************

[signing page to follow]
IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

THE HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD
Signed for and on behalf of The Hamilton-Wentworth District School Board by:

Signed ______________________   Signed ______________________
   Name:                         Name:                        
   Title:                        Title:                        
Date_________________________   Date________________________

CITY OF HAMILTON
Signed for and on behalf of the City of Hamilton by:

Signed ______________________   Signed ______________________
   Name: Fred Eisenberger       Name: Rose Caterini       
   Title: Mayor                Title: City Clerk         
Date_________________________   Date________________________

Approved as to Form

Authorized by Item 10.2 of Council Agenda, a motion passed and approved by the Council of the City of Hamilton on the 9th day of December, 2009.

File Number: _________________

Approved as to Content
COMMUNITY SERVICES DEPARTMENT

PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
SCHEDULE “B”
USES

All activities associated with a municipal recreation and aquatic facility.
SCHEDULE “C”
INITIAL PLANS

See attached documents hereto.