



## CITY OF HAMILTON

### COMMUNITY SERVICES DEPARTMENT Recreation Division

<b>TO:</b> Chair and Members Emergency & Community Services Committee	<b>WARD(S) AFFECTED:</b> WARD 8
<b>COMMITTEE DATE:</b> September 10, 2012	
<b>SUBJECT/REPORT NO:</b> Sir Allan MacNab Land Lease Agreement (CS12030) (Ward 8)	
<b>SUBMITTED BY:</b> Joe-Anne Priel General Manager Community Services Department	<b>PREPARED BY:</b> Mary Jo Harris 905-546-2424 Ext. 4755
<b>SIGNATURE:</b>	

### RECOMMENDATION

- (a) That the draft Sir Allan MacNab Land Lease Agreement (attached as Appendix A to Report CS12030) between the City of Hamilton and the Hamilton-Wentworth District School Board, located at 145 Magnolia Drive, Hamilton, be approved; and,
- (b) That the Mayor and City Clerk be authorized and directed to execute the Sir Allan MacNab Land Lease Agreement, between the City of Hamilton and the Hamilton-Wentworth District School Board, located at 145 Magnolia Drive, Hamilton (attached as Appendix A to Report CS12030), in a form satisfactory to the City Solicitor.

## **EXECUTIVE SUMMARY**

Report CS12030 provides staff with direction to enter into a new land lease agreement with the Hamilton-Wentworth District School Board (HWDSB). The lease agreement includes the lands for the original Sir Allan MacNab Recreation Centre building, continued shared use of the parking lot, and additional land for the 990 square foot building extension that was completed in 2011 as part of the Infrastructure Stimulus Fund (ISF) program. The new lease conditions are a base rent of \$1.00 per year for the term of forty-nine (49) years commencing on the 1st day of January, 2012, and ending on the 31st day of December, 2061.

In June 1980 the HWDSB agreed to convey the land required for the building of the original Sir Allan MacNab Recreation Centre by a letter to the Director of Real Estate, City of Hamilton, however no conveyance or transfer occurred nor lease created. In an Open Session of the HWDSB on June 20, 2011 a recommendation was approved to enter into a lease with the City of Hamilton for the Sir Allan MacNab Recreation Centre.

***Alternatives for Consideration – N/A***

## **FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

### **Financial:**

The City of Hamilton will pay base rent of \$1.00 per year to the Hamilton-Wentworth District School Board for the term of forty-nine (49) years commencing on the 1st day of January 2012, and ending on the 31st day of December 2061. To have a legally valid contract a nominal consideration (money) must change hands.

### **Staffing:**

There are no staffing implications associated with Report CS12030.

### **Legal:**

Legal Services has been involved in the preparation of the land lease agreement with the Hamilton-Wentworth District School Board for the approved use of the land at 145 Magnolia Drive, Ontario.

## **HISTORICAL BACKGROUND**

In 1980 the City of Hamilton received a letter conveying the property required for the building of the original Sir Allen MacNab Recreation Centre. No formal lease or conveyance was done at that time.

In 2009, \$3.0 million in capital improvements to the Sir Allan MacNab Recreation Centre was approved through the Federal Infrastructure Stimulus Fund (ISF). Facility and Capital Projects staff worked with HWDSB staff through the project design and development. Upgrades included:

- Universal change room and washroom;
- Staff office;
- A new pool filtration system;
- Parking lot repairs and resurfacing;
- Replacement of the current HVAC system;
- Installation of a new dehumidification system;
- Addition of air conditioning to the community room and administration area;
- Exterior wall repairs;
- Removal and replacement of the ceiling;
- Tile replacement in the existing change rooms; and,
- Equipment and fitting upgrades.

This project was based on the recommendations of the Use, Renovation and Replacement Study for Hamilton Recreation and Public-Use Facilities (2008).

On June 20, 2011, the Hamilton Wentworth District School Board approved a recommendation to enter into a lease with the City of Hamilton for the above development. The terms of the agreement were approved by the HWDSB on June 13, 2012.

#### **POLICY IMPLICATIONS**

There are no policy implications associated with Report CS12030.

#### **RELEVANT CONSULTATION**

City Manager's Office, Legal Services Division

- Preparation of the lease
- Communications and lease agreement negotiations with School Board

Public Works, Environment and Sustainable Infrastructure, Surveys/Technical Services

- Update title search and deposit the plan

Community Services Department, Recreation Division

- Leasing agreement negotiations by District Operations Manager

**SUBJECT: Sir Allan MacNab Land Lease Agreement (CS12030) (Ward 8)**  
**- Page 4 of 5**

---

Planning and Economic Development Department, Real Estate Section

- Lease conditions with regard to taxes and assessment

The Hamilton-Wentworth District School Board

- Lease agreement consultation

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

The Sir Allan MacNab Land Lease with the Hamilton-Wentworth District School Board formalizes the long term successful partnership of providing recreation services.

**ALTERNATIVES FOR CONSIDERATION**

N/A

**CORPORATE STRATEGIC PLAN**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Skilled, Innovative & Respectful Organization***

- ◆ More innovation, greater teamwork, better client focus

***Financial Sustainability***

- ◆ Effective and sustainable Growth Management
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner
- ◆ Address infrastructure deficiencies and unfunded liabilities

***Intergovernmental Relationships***

- ◆ Maintain effective relationships with other public agencies

***Growing Our Economy***

- ◆ An improved customer service

***Social Development***

- ◆ Residents in need have access to adequate support services

***Environmental Stewardship***

- ◆ Reduced impact of City activities on the environment

***Healthy Community***

- ◆ Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services)

***Financial Sustainability***

- ◆ Effective and sustainable growth management
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner
- ◆ Address infrastructure deficiencies and unfunded liabilities

***Intergovernmental Relationships***

- ◆ Maintain effective relationships with other public agencies

<b>APPENDICES / SCHEDULES</b>
-------------------------------

Appendix A to Report CS12030: Sir Allan MacNab Land Lease Agreement between the City of Hamilton and the Hamilton-Wentworth District School Board including survey.

## MACNAB LAND LEASE

THIS INDENTURE OF LEASE made in quadruplicate this 1<sup>st</sup> day of January, 2012.

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

AND IN PURSUANCE of Section 183 of the *Education Act*, R.S.O. 1990, c. E.2, (the "Education Act")

BETWEEN:

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

OF THE FIRST PART

- and -

CITY OF HAMILTON  
(herein called the "Tenant")

OF THE SECOND PART

WHEREAS:

1. On June 12, 1980, the HWDSB approved the conveyance of certain lands to the Tenant for the construction and operation of a recreation centre to be located and adjoined to the Sir Allan MacNab Secondary School located at 145 Magnolia Drive, Hamilton, Ontario (the "HWDSB Lands");
2. Notwithstanding no conveyance occurred and no lease was created, the Tenant constructed and has operated to the residents of the City of Hamilton a Recreational Community Centre (on Part 1, 62R-19236), together with a recent 990 square foot addition to the original building on the said Lands (on Part 5, 62R-19236), 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";
3. As of the date hereof, the HWDSB has agreed to lease to the Tenant and the Tenant has agreed to take a lease from the HWDSB of the lands described and identified as Parts 1, 2, 5, 6 and 7 of Registered Plan 62R-19236 attached in Schedule "A" hereto, and municipally known as part of 145 Magnolia Drive in Hamilton, Ontario (herein called the "Lands"); and,
4. For further certainty and without limitation, at the end of the Term, whether by expiry or with the consent of the parties, the Building shall be owned solely and outright by the HWDSB.

NOW THEREFORE in consideration of the rents reserved and the covenants and provisos herein contained on the part of the Tenant, the HWDSB 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 and subject to the limitations and exceptions contained herein, the HWDSB demises and leases to the Tenant, and the Tenant rents from the HWDSB, the lands described and identified as Parts 1, 2, 5, 6 and 7 of Registered Plan 62R-19236 attached in Schedule "A" hereto, and municipally known as 145 Magnolia Drive in Hamilton, Ontario (herein called the "Lands"). The Tenant accepts the Lands on an "as is" basis.
- (b) 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 forty-nine (49) years commencing on the 1st day of January, 2012, and ending on the 31st day of December, 2061 (hereinafter the "Term").
- (c) Subject to Section 1(d) hereof, 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 (the "Structures") and surrender, yield and deliver up the Building and other improvements which may be on the Lands at that time 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 save and except for those equipment, machinery, chattels, furniture and other facilities used in connection with said structures. All the right, title and interest thereto of the Tenant shall cease and thereupon vest in the HWDSB; provided always that at the HWDSB's option, to be exercised in writing not less than six (6) months before the expiration of the Term, the HWDSB may request the Tenant to demolish and remove the Structures from the Lands, grade and level the Lands, all at the Tenant's sole cost and expense.

- (d) Subject to compliance with O. Reg. 444/98 of the *Education Act*, R.S.O. 1990, c. E.2 or any successor legislation or regulation (herein called "Regulation 444"), and the rights of any prior ranking preferred agency as defined therein, the City shall have the first right to purchase the Lands at the then fair market value, in the event HWDSB in its absolute discretion, declares the Lands (or the entire parcel owned by the HWDSB which includes the Lands) as surplus and decides to sell such lands in accordance with the *Education Act*. For greater certainty, the parties acknowledge that notwithstanding the Tenant's right of refusal, title may still be encumbered or required by HWDSB to be encumbered with all easements or rights-of-way as may be necessary to access and service the HWDSB Lands in the event only a portion of the HWDSB Lands are declared surplus.
- (e) Subject to the option of the HWDSB regarding demolition under Section 1(c) hereof, 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 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 HWDSB save and except for those equipment, machinery, chattels, furniture and other facilities used in connection with said structures.

## 2. RENT

The Tenant shall pay to the HWDSB a nominal rent of One Dollar (\$1.00) per annum for the Term of this Lease. Rent shall be payable on the 1<sup>st</sup> day of January, 2012 and on or before the 1st day of January each year thereafter for the Term of this Lease ("Rent").

## 3. NET LEASE

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 HWDSB hereunder shall be absolutely net to the HWDSB 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 and all taxes, indirect or direct, exigible or chargeable thereon, 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, and unless otherwise expressly provided for, all operating and maintenance costs to all improvements, buildings, structures and/or facilities located on those designated Parts 1, 2, 5, 6 and 7 of Registered Plan 62R-19236 attached in Schedule "A" hereto.

Without in any way limiting the generality of the foregoing and in addition thereto, the Tenant shall be responsible for and shall pay for: (a) Landscaping - all curb cuts, the removal of top soil, compacting grading and landscaping at the front of the lot required by the City of Hamilton and hereby accepts the said Lands in their current condition and state; and, (b) Joint Exterior Costs - its proportionate share, in accordance with Section 5(n), of all costs in relation to exterior works, repairs, maintenance, refurbishment, resurfacing, snow removal, re-grading, cleaning of the joint use areas of the parking lot and driveway designated as Part 3 (and, to the extent Union Gas Limited is not responsible for such surface repairs and resurfacing costs, Part 4) on Registered Plan 62R-19236 attached in Schedule "A" hereto, by remitting payment for same to the HWDSB within thirty (30) days of receipt of any invoice, statement or notice; save and except where it is possible for HWDSB to have any supplier directly invoice it and the

Tenant directly for their respective proportionate share of the joint exterior costs ("Joint Exterior Costs").

**4. ACCESS AND PARKING**

- (a) The HWDSB agrees that, notwithstanding anything else herein contained, it will at all times throughout the Term maintain the driveway at a Joint Exterior Cost of both parties described and identified as Part 3 on Registered Plan 62R-19236 attached in Schedule "A" hereto as the "primary driveway" for the purposes of vehicular and pedestrian ingress, egress and access to and from the Lands and Building by the Tenant, including, without limitation, its users, employees and invitees, in common with others entitled thereto.
- (b) The HWDSB further agrees that, notwithstanding anything else herein contained, it will at all times throughout the Term maintain the parking lot at a Joint Exterior Cost of both parties described and identified as Part 3 on Registered Plan 62R-19236 attached in Schedule "A" hereto as the "primary parking" for the Tenant, including, without limitation, its users, employees and invitees, in common with others entitled thereto, to the Building and Lands.
- (c) HWDSB acknowledges that the Tenant shall have exclusive use over those parking spaces provided for and depicted in red on Part 3 of Schedule "C" and shall have non-exclusive rights for parking in all other parking spaces designated on Schedule "C" subject to use by the HWDSB's staff, invitees and guests during normal school hours. The Tenant may install signage on Part 3 to indicate its exclusive use parking areas all at its sole cost and subject to prior written consent of HWDSB, not to be unreasonably withheld, provided that at all times the Tenant shall maintain said signage and remove said signage prior to the expiration or sooner termination of this agreement, all at the Tenant's sole cost and expense.
- (d) The Tenant acknowledges and agrees that HWDSB reserves unto itself, its officers, trustees, staff, students and invitees all access for ingress and egress over Part 2, Plan 62R-19236 as an entrance to the school located on the HWDSB Lands.

**5. TENANT'S COVENANTS**

The Tenant covenants with the HWDSB 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 HWDSB 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 HWDSB 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 HWDSB in respect of such action and all costs of the HWDSB relating thereto, in the name of the HWDSB and the HWDSB hereby agrees to join in such proceedings. If and so often as the Tenant shall neglect or omit to pay the Property Taxes, the HWDSB 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 HWDSB forthwith upon receipt from the HWDSB 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 HWDSB 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 and subject to Article 4 above, 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 HWDSB 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 HWDSB'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 HWDSB detailed plans and specifications, in duplicate, of the Construction, one of which duplicate copies may be retained by the HWDSB. 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, at its sole option, 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 regardless of the Tenant's exercise of its option to repair or replace same. In the event that the Building is damaged beyond a state conducive to repair or replacement (as determined by HWDSB's architect) or if the Tenant elects not to repair or replace the Building, then HWDSB may elect to terminate this lease agreement upon sixty (60) days written notice to the Tenant and the provisions of this lease relating to termination, including paragraph 1(e) above, shall be applicable forthwith;

- (h) View State of Repair - to permit the HWDSB 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 HWDSB) 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 HWDSB, the HWDSB 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 HWDSB 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 HWDSB 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 HWDSB liable for, nor has the HWDSB 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 providing for services and programs that, *inter alia*, promote health, emotional, social and physical development in children; 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 HWDSB and any such sign shall conform with governmental requirements.
- (n) Proportionate Share of Joint Exterior Costs -To pay its proportionate share, namely fifty-six percent (56%) of all Joint Exterior Costs as described in Section 3 and Schedule "C"

hereof. HWDSB shall provide the Tenant with not less than twelve months notice of its intention to repave the parking lot so that the Tenant may anticipate its proportionate share of same at its annual capital budget review. In the event HWDSB elects to repave the parking lot prior to the expiration of the notice above, it may proceed to repave the parking lot and invoice the Tenant for same in accordance with this Agreement and the Tenant may not be obligated to pay said invoice for its proportionate share of the repaving until 30 days following the expiration of the notice period referred to above.

**6. HWDSB'S COVENANTS**

The HWDSB 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 HWDSB 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 HWDSB's reversionary interest under this Lease.
- (d) The HWDSB 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 HWDSB in connection with such consents, authorizations and approvals in respect of which the HWDSB is not fully indemnified, and provided the HWDSB has received from the Tenant such security, if any, for such liability which the HWDSB, acting reasonably, determines is required, in such form, amount and at such times as the HWDSB 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 HWDSB.
- (b) Sub-Lease - the Tenant named at the commencement of this Lease upon the prior written consent of the HWDSB may enter into a sublease(s) provided that the sub-tenant(s) enters into a sublease which continues the obligations under this Lease, including without limitation the use of the premises described in Section 5(l) hereof.
- (c) Assignment by HWDSB - to not convey or assign its interest in the Lands or this Lease without first exercising its obligations under the *Education Act* and Regulation 444/98 or any successor legislation or regulation thereunder and otherwise providing for the City's rights under Section 1(d) herein.
- (d) Assignment by Tenant - to not convey or assign its interest in the Lands or this Lease without the prior written consent of the HWDSB (which consent may not be unreasonably withheld). In considering the reasonableness of any such assignment, reference should be made to the HWDSB's role, responsibility and purpose as a district school board and its primary obligation regarding the safety, security and protection of its child students at its school facilities adjacent to the Lands, such that any permitted assignee must have similar expressed public goals, objects and purposes to that of the Tenant and the obligation of any succeeding tenant to abide by and comply with the use provisions contained in Section 5(l) hereof. 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 HWDSB from the Tenant. Such written offer shall be submitted to the HWDSB 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 HWDSB shall notify the Tenant of acceptance or refusal within thirty (30) days of receipt. The HWDSB 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 HWDSB 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. Intentionally Deleted**

**10. SUBSEQUENT CONSTRUCTION**

- (a) It is agreed that any additions to 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, including the HWDSB Lands. The HWDSB 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, including the HWDSB Lands. The Tenant shall construct and complete the Building expeditiously and in a good and workmanlike manner.
- (b) Before commencing excavation or any work on the Lands for the construction of new additions to the Building, the Tenant shall have:
  - (i) furnished proof of the insurance required by Section 10(f);
  - (ii) obtained the approval of the HWDSB 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 new additions to the Building:
  - (i) the new additions to the Building shall be constructed in all respects in accordance with the initial plans provided to HWDSB in advance ("Initial Plans"), subject to such changes as may be required by governmental authorities or otherwise as approved in writing by the HWDSB, 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 HWDSB, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract;

- (v) the HWDSB 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 any new additions to 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) per occurrence 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 HWDSB 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 and Lands. 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 HWDSB 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 HWDSB and/or the Tenant to the Trustee in accordance with Section 13(d).

#### **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 HWDSB gives its prior written approval of the notice or caveat by executing any document general or authorization and direction affecting the registration or notice in the public land registry systems.
- (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 HWDSB's consent.

#### **13. INSURANCE AND INDEMNITY**

- (a) Tenant Indemnity - The Tenant covenants and agrees to indemnify, defend and save the HWDSB 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 solely by the negligence or other fault of the HWDSB; 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 solely by the negligence or other fault of the HWDSB.
- (b) HWDSB Indemnity - Except in the case of Tenant's own negligence and/or willful misconduct or that of its agents, employees, contractors, invitees or licensees, HWDSB 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 HWDSB'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 HWDSB 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, Sexual Abuse or Molestation coverage, owners' and contractors' protective insurance coverage and coverage shall be included for "Hostile Fire" 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 HWDSB as an additional insured as their interest may appear; and
  - (iv) any other form of insurance with whatever limits the Tenant, the HWDSB, 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.
- 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.
- (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 HWDSB 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 HWDSB 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

- (f) Insurance Trustee - Where a partial or complete destruction of the Building occurs and the Tenant rebuilds, the following procedures shall apply:
- (i) 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;
  - (ii) the insurance proceeds shall be paid by the Tenant and/or the HWDSB to a trustee (the "Trustee") jointly named by the HWDSB and the Tenant and any mortgagee, and the Trustee shall be expressly instructed to act on behalf of both the HWDSB 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 HWDSB 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;
  - (iii) 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 HWDSB, 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;
  - (iv) 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;
  - (v) 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;
  - (vi) 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;
  - (vii) 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
  - (viii) upon completion of the work of restoring and repairing the Building and payment in full therefor by the Tenant, the HWDSB 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.
- (e) 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.

- (f) Evidence of Insurance - the Tenant shall furnish the HWDSB 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 HWDSB 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.

**14. DEFAULT**

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

- (a) the Tenant fails to pay 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 HWDSB 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 HWDSB within thirty (30) days after the giving of such notice by the HWDSB that the Tenant disputes the matters complained of in such notice, in which case, unless otherwise agreed between the HWDSB 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 HWDSB fails to observe or perform any of the terms, covenants or conditions of this Lease to be observed or performed by the HWDSB and does not, following notice of such failure by the HWDSB 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 HWDSB 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 HWDSB 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 HWDSB 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 Tenant that the HWDSB disputes the matters complained of in such notice, in which case, unless otherwise agreed between the HWDSB and the Tenant, such issues shall be determined in accordance with Article 16; if such determination shall be adverse to the HWDSB, wholly or in part, the HWDSB 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 HWDSB 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 HWDSB's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and the HWDSB shall not be liable to the Tenant for any loss, injury or damages caused by acts of the HWDSB in remedying or attempting to remedy such default. The Tenant shall pay to the HWDSB all expenses incurred by the HWDSB in connection therewith plus fifteen percent (15%);
  - (ii) to recover from the Tenant all damages, costs and expenses incurred by the HWDSB as a result of any default by the Tenant (including, if the HWDSB 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 HWDSB 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 HWDSB 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 HWDSB to levy such distress. the Tenant hereby irrevocably waives and renounces the benefit of any present or future legislation taking away or diminishing the HWDSB's right to distrain for Rent or other amounts owing under this Lease.
- (c) Costs - The Tenant shall pay to the HWDSB all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the HWDSB 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 HWDSB plus fifteen percent (15%).
- (d) Remedies Cumulative - Notwithstanding any other provision of this Lease, the HWDSB 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 HWDSB by statute or common law.
- (e) If and whenever an Event of Default by the HWDSB 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 HWDSB, 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 HWDSB under this Lease for the account of the HWDSB. No notice of the Tenant's intention to remedy or attempt to remedy such default need be given to the HWDSB unless expressly required by this Lease, and the Tenant shall not be liable to the HWDSB for any loss, injury or damages caused by acts of the Tenant in remedying or attempting to remedy such default. The HWDSB shall pay to the Tenant all expenses incurred by the Tenant in connection therewith plus fifteen percent (15%); and
  - (iii) to recover from the HWDSB all damages, costs and expenses incurred by the Tenant as a result of any default by the HWDSB plus fifteen percent (15%).
- (f) Costs - The HWDSB 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 HWDSB under this Lease, or in respect of which the HWDSB 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 HWDSB, 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 HWDSB, 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 HWDSB 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 HWDSB and the Tenant shall co-operate 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 HWDSB, addressed to it at:  
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**

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

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

unless either party gives notice to the other of a change of address by registered mail or successor notification system. 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 HWDSB 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 HWDSB 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 HWDSB shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the HWDSB'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 HWDSB 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 HWDSB 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 Tenant shall only have exclusive access to those parking areas shown in red on Schedule "C" hereunder.
- (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 HWDSB and without any compensation to the HWDSB 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 \_\_\_\_\_  
Name:  
Title:

Signed \_\_\_\_\_  
Name:  
Title:

Date \_\_\_\_\_

Date \_\_\_\_\_

**CITY OF HAMILTON**

Signed for and on behalf of the City of Hamilton by:

Signed \_\_\_\_\_  
Name: R. Bratina  
Title: Mayor

Signed \_\_\_\_\_  
Name: Rose Caterini  
Title: City Clerk

Date \_\_\_\_\_

Date \_\_\_\_\_

Authorized by Item XX of the Emergency & Community Services Committee Report 11-0XX adopted by the Council of the City of Hamilton on the XX<sup>th</sup> day of XXXX, 2011.

File Number:

**APPROVED AS TO FORM**

\_\_\_\_\_  
LEGAL SERVICES

\_\_\_\_\_  
**APPROVED AS TO CONTENT  
COMMUNITY SERVICES DEPARTMENT**



**SCHEDULE "B"  
USES**

All activities associated with a municipal recreation and aquatic facility.



**SCHEDULE "C"  
PARKING ALLOCATION**

SCHEDULE C

SIR ALLAN MACNAB – 145 MAGNOLIA DR., HAMILTON

