

## Request for Decision

### 140 Durham Street - Condominium Corporation

Presented To:	City Council
Presented:	Tuesday, Apr 11, 2017
Report Date	Thursday, Mar 02, 2017
Type:	Routine Management Reports

#### Resolution

That the Chief Administrative Officer be given delegated authority to attend meetings of the Owners as the City's representative.

#### Finance Implications

No financial implications.

## Background

In March, 1996 the Young Men's Christian Association (YMCA) and the former City of Sudbury entered into a Development Agreement to construct the Centre for Life building on Durham Street. The project was completed in August 2000.

The Development Agreement contractually bound the parties to proceed with the registration of the complex as a condominium. On November 9, 2012 Sudbury Standard Condominium Corporation # 21 was created and registered (the "Condominium").

The Condominium consists of 6 units, four which belong to the City, consisting of the Older Adults Centre, the former City Daycare, the parking garage and the washrooms for Memorial Park. The YMCA owns 2 units, one occupied by the YMCA and its Daycare and the other unit occupied by Health Sciences North.

The Condominium is managed by a Board of Directors consisting of 3 City representatives and 3 YMCA representatives. Vacancies currently exist and a meeting of the Owners is required to appoint new representatives. A meeting of the Owners is similar in nature to an Annual General Meeting (AGM) for a conventional corporation.

City Council at its meeting of June 10, 2009 received a report from the City Solicitor on the Condominium and passed the following Resolution:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&agenda=report&itemid=20&id=202>

"2009-246

#### Signed By

##### Report Prepared By

Keith Forrester  
Acting Director of Asset Services  
*Digitally Signed Mar 17, 17*

##### Division Review

Ed Stankiewicz  
Executive Director of Finance, Assets  
and Fleet  
*Digitally Signed Mar 22, 17*

##### Recommended by the Department

Kevin Fowke  
General Manager of Corporate  
Services  
*Digitally Signed Mar 22, 17*

##### Recommended by the C.A.O.

Ed Archer  
Chief Administrative Officer  
*Digitally Signed Mar 28, 17*

THAT a By-Law be passed to authorize the Chief Administrative Officer/Treasurer to execute the Condominium declaration and any other documents that are necessary to register the Centre for Life complex as a Condominium in accordance with section 2(1) of the *Condominium Act*;

AND THAT a By-law be passed to appoint the Chief Administrative Officer/Treasurer, the Director of Asset Services, the City Solicitor, Daran Moxam, Ian Sinclair and Paul Kusnierczyk as the first Board of Directors of the Centre for Life Sudbury Condominium Corporation in accordance with section 42(1) of the *Condominium Act*;

AND THAT the Chief Administrative Officer/Treasurer, or in his or her absence, the Director of Asset Services, be authorized by Bylaw to attend meetings of the Owners of Units of the Condominium Corporation on behalf of the City, and to note or take any other action he or she deems advisable in protecting the interests of the City at such meetings;

AND THAT a By-law be passed to exempt this property from municipal and school taxes.

Council passed bylaw 2009-158 to amend the Delegation bylaw in order to give effect to this resolution however the Delegation bylaw passed in 2014 did not carry this forward. As a result, an amendment to the Delegation bylaw appears on the agenda to include delegated authority for the Chief Administrative Officer or in his or her absence the Director of Assets and Fleet to attend meetings of the owners as the City's representative.

<https://agendasonline.greatersudbury.ca/?pg=agenda&action=navigator&lang=en&id=203&itemid=2123>

It is proposed that the Director of Assets and Fleet Services, the Manager of Accounting and the Director of Leisure Services represent the City of Greater Sudbury on the Board of Directors of the Centre for Life Condominium Corporation. The appointment of the directors will occur at an upcoming meeting of the owners of the Condominium Corporation.

Handwritten notes:  
D. Nadeau  
D. Braneau  
Policy

**BY-LAW 2009-158**

**A BY-LAW OF THE CITY OF GREATER SUDBURY  
TO AMEND BY-LAW 2006-259, A BY-LAW RESPECTING THE  
DELEGATION OF AUTHORITY TO VARIOUS OFFICERS OF THE CITY**

**WHEREAS** the Council of the City of Greater Sudbury has passed By-law 2006-259, respecting the delegation of authority to various officers of the City, and has subsequently amended that By-law, and wishes to amend that By-law further;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER  
SUDBURY ENACTS AS FOLLOWS:**

1. By-law 2006-259 as amended, is hereby further amended by adding the following as sections 26(1) and 26(2):

"26 (1) The Chief Administrative Officer is hereby authorized to execute the Condominium declaration and any other documents necessary to register the Centre for Life Complex as a Condominium in accordance with section 2(1) of the *Condominium Act*.

26 (2) The Chief Administrative Officer, or, in his or her absence, the Director of Asset Services, is hereby authorized to attend meetings of the Owners of Units of the Centre for Life Condominium Corporation on behalf of the City; and to vote or take any other action he or she deems desirable at such meetings to protect or promote the interests of the City."

2. This By-law shall come into force and take effect immediately upon the final passing thereof.

**READ A FIRST AND SECOND TIME IN OPEN COUNCIL** this 24th day of

June, 2009.

Rodriguez Mayor  
A. Haché Clerk

**READ A THIRD TIME AND FINALLY ENACTED AND PASSED IN**

**OPEN COUNCIL** this 24th day of June, 2009.

Rodriguez Mayor  
A. Haché Clerk

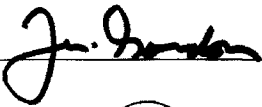

**BY-LAW 96-43**

**BEING A BY-LAW OF THE CORPORATION OF THE CITY OF  
SUDBURY TO AUTHORIZE THE MAYOR AND CLERK TO EXECUTE  
AN AGREEMENT BETWEEN THE SUDBURY YOUNG MEN'S  
CHRISTIAN ASSOCIATION AND THE CORPORATION OF THE CITY OF  
SUDBURY FOR THE WELLNESS CENTRE CONSISTING OF  
THE YMCA CENTRE FOR LIFE AND OLDER ADULT CENTRE**

THE COUNCIL OF THE CORPORATION OF THE CITY OF SUDBURY HEREBY  
ENACTS AS FOLLOWS:

- 1, THAT the Mayor and Clerk be and the same are hereby authorized to execute an Agreement and any and all other documents necessary to complete the transaction between The Corporation of the City of Sudbury and The Sudbury Young Men's Christian Association in the form attached hereto as Schedule "A" which Schedule forms part of this by-law.
2. THAT this by-law shall come into force and take effect immediately upon the final passing of same.

READ THREE TIMES AND FINALLY ENACTED AND PASSED IN OPEN COUNCIL  
THIS TWELFTH DAY OF MARCH, 1996.

 \_\_\_\_\_ Mayor  
 \_\_\_\_\_ Clerk

SCHEDULE "A"

THIS WELLNESS CENTRE DEVELOPMENT AGREEMENT MADE IN TRIPPLICATE  
THIS EIGHTH DAY OF MARCH, 1996.

BETWEEN:

SUDBURY YOUNG MEN'S CHRISTIAN ASSOCIATION

Hereinafter called "the YMCA"

of the FIRST PART;

and -

THE CORPORATION OF THE CITY OF SUDBURY

Hereinafter called "the City"

of the SECOND PART;

WHEREAS the YMCA and the City deem it desirable to enter into a partnership  
to provide to the citizens of Sudbury a combined YMCA Centre for Life and Older Adult  
Centre on lands located in the downtown of the City of Sudbury;

AND WHEREAS the Wellness Centre, consisting of the YMCA Centre for Life  
and Older Adult Centre, together with parking (hereinafter called the "Project") shall be  
located on those lands described in Schedule "A" and shown on Schedule "B", which  
Schedules shall form part of this Agreement;

AND WHEREAS the YMCA will bring together partners from the community to  
meet the goal of total wellness;

AND WHEREAS the City will partner with the older adults to develop the Older  
Adult Centre component of the Project and with the Metro Centre Management Board  
to develop the parking component of the Project;

AND WHEREAS the Project will be funded by the YMCA, the City, Metro Centre  
Management Board, community contributions and senior government grants;

AND WHEREAS this Agreement is being entered into as a public/private  
partnership pursuant to Section 210.1 of the Municipal Act;

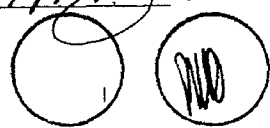
THIS IS SCHEDULE "A" TO BY-LAW 96-43 OF THE CORPORATION OF THE CITY OF SUDBURY

Per: 

Mayor

Per: 

Clerk



NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter contained, the YMCA and the City agree as follows:

**ARTICLE 1 - INTERPRETATION**

**1.01 DEFINITIONS**

Schedule "C" to this Agreement includes the words and phrases defined for the purposes of this Agreement.

**1.02 SCHEDULES**

The following Schedules which are attached to this Agreement are incorporated by reference into this Agreement and are deemed to be part of it;

Schedule "A"	- Description of Lands
Schedule "B"	- Sketch of Lands
Schedule "C"	- Definitions
Schedule "D"	- Conditions Precedent
Schedule "E"	- Project Organizational Chart
Schedule "F"	- Project Co-ordinating Committee Mandate
Schedule "G"	- Pro-forma Operating Statements - Centre for Life - Pro-forma Operating Statements - Older Adult Centre

**1.03 GOVERNING LAW**

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable to the Province.

**1.04 SECTION 210.1 MUNICIPAL ACT**

This Agreement is entered into pursuant to Section 210.1 of the Municipal Act. The City agrees to enact the necessary by-law to exempt the Project from municipal and school board taxes pursuant to sub-section 210.1(7) of the Municipal Act.



**1.05 NOT A PARTNERSHIP**

Nothing in this Agreement is intended to or will be construed to create a relationship of partners, joint venturers or fiduciaries between the parties. Neither party hereto has any authority to enter into any contract, assume any obligations or give any warranties or representations on behalf of the other, except as expressly otherwise provided in this Agreement.

**ARTICLE 2 - DEVELOPMENT**

**2.01 COMPONENTS**

The parties hereto agree to develop, construct and operate upon the lands a Wellness Centre, consisting of a YMCA Centre for Life, Older Adult Centre and parking in accordance with the terms and conditions herein.

**2.02 CONDITIONS PRECEDENT**

This Agreement and the commencement of construction of the Project is subject to the fulfilment (or, in lieu of fulfilment, the signed Waiver of both parties) of all of the conditions precedent set out in Schedule "D", attached hereto.

**2.03 CONDOMINIUM**

The parties agree that the City shall assemble the lands and that the Project will be developed as a condominium in accordance with Article 6.

**2.04 SCOPE OF PROJECT**

It is a full-service Wellness Centre, addressing the needs of health, fitness/lifestyle programs, social-intellectual and spiritual dimensions, day-care services, cardiac-rehabilitation.





The functional space components within the building may include the following areas: gymnasium, fitness/activity rooms, pool, weight room, racquet-ball courts, running track, meeting/conference rooms, crafts room, quiet areas, food-services, administrative support and related mechanical/janitorial/physical plant support.

#### 2.05 CONSTRUCTION ORGANIZATIONAL STRUCTURE

The organizational chart for the construction of the Project is shown on Schedule "E", attached hereto.

### ARTICLE 3 - FINANCING

#### 3.01 CITY'S CONTRIBUTION

Subject to paragraph 3.06, the City's contribution of approximately Five Million One Hundred Thousand (\$5,100,000.00) Dollars shall consist of an estimated Two Million Seven Hundred Thousand (\$2,700,000.00) Dollars towards the Older Adult Centre and Two Million Four Hundred Thousand (\$2,400,000.00) Dollars towards the parking component.

#### 3.02 YMCA'S CONTRIBUTION

Subject to paragraph 3.06, the YMCA shall contribute a maximum of Nine Million Seven Hundred Thousand (\$9,700,000.00) Dollars for its share of the building (inclusive of Architect's fees) and a maximum of Eight Hundred and Forty Thousand (\$840,000.00) Dollars for the furnishings towards the contribution of the YMCA Centre for Life component of the Project.

#### 3.03 FURNISHINGS

The parties acknowledge and agree that the estimated costs do include provision for furniture and equipment, which shall be the sole responsibility of each party hereto.



**3.04 UPSET LIMITS**

The City's contribution represents the upset limit of this Project. No demand shall be made upon the City by the YMCA for any additional contribution toward the YMCA's costs of the Project including operating and debt servicing costs if applicable. No demand shall be made upon the YMCA for an additional contribution towards the City's costs of the Project including operating and debt servicing costs, if applicable. Bridge financing, if required by the YMCA, must be secured through financial sources other than the City.

**3.05 TRUST FUND**

The City and the YMCA both recognize and agree that the construction of the Project shall require there to be on hand from time to time such monies as may be required by the Project to pay all of the Project's bills for goods, materials and or services. The City, pursuant to Section 3.02, shall contribute Six Million, One Hundred Thousand (\$6,100,000.00) Dollars towards the cost of construction of the Project. The YMCA shall contribute from government grants, community contributions and bank/mortgage financing, the sum of Nine Million Seven Hundred Thousand (\$9,700,000.00) Dollars towards the cost of the construction of the Project. In addition, the YMCA will be paying Eight Hundred and Forty Thousand (\$840,000.00) Dollars for furniture and equipment for its area of the Project. Each party shall pay such monies as the Project Co-ordinating Committee shall determine from time to time as being necessary to pay the obligations of the Project. Such monies will be paid into a special interest bearing account to be managed by the City and from this special account the monies will be paid out for the purposes of the Project. Any income/interest earned on the monies in the special account shall remain in the trust account for the benefit of the Project. The City shall provide to the Project Co-ordinating Committee on a monthly basis, statements relating to the special account. All cheques written/charged against the trust account shall be authorized in writing by a designated representative of the City and the YMCA.



3.06 JOINT USE/MANAGEMENT

It is the intention of both parties that the City is to assemble the lands required for the Wellness Centre. A portion of the lands is already owned by the City and a portion is to be acquired by the City from Her Majesty The Queen in Right of Canada, as represented by the Minister of Public Works ("Public Works") all of which is described in Schedule "A".

Further, it is the intention of both parties that the YMCA shall compensate the City with respect to the value of the lands assembled by the City for the Wellness Centre on the following basis:

A) ORIGINAL CITY LANDS

These lands comprise a total area of One Hundred and Forty Thousand and Seventy-nine (140,079) square feet (City lands - One Hundred and Eight Thousand, Two Hundred and Thirty-eight (108,238) square feet), (Public Works lands - Thirty-one Thousand, Eight Hundred and Forty-one (31,841) square feet).

Should the City pay Public Works full value for its lands at the rate of Eighteen (\$18.00) Dollars per square foot, the YMCA shall reimburse the City on account of the original City lands on the basis of Eighteen (\$18.00) Dollars per square foot of one-half (1/2) of that portion of the lands occupied by the main structure of the Wellness Centre calculated as follows:

<b>YMCA REIMBURSEMENT TO CITY</b>	<b>=</b>	<b>\$18.00</b>	<b>X</b>	<b>Square Footage of that Portion of the lands occupied by the Main Structure of the Wellness Centre</b>
				<hr/>
				<b>2</b>

This reimbursement by the YMCA to the City shall be in the form of community programming to be developed through a Joint Use Agreement or, possibly, Agreements between the City and the YMCA which Joint Use Agreement(s) shall, amongst other



matters, include:

- (i) a recognition of the specific mandate and mission of the YMCA;
- (ii) a period of twenty (20) years during which the YMCA shall provide to the City such community programming;
- (iii) assurances on the part of the City that the opportunity to provide such community programming will always be available during the twenty (20) year term, and that none of the amount of the reimbursement will have to be paid in cash, although the privilege of paying cash shall be available to the YMCA;
- (iv) principles of valuing the community program as aforesaid shall be based on the dollar difference between the budgeted amount in the approved City budget in existence at the time of the implementation of the particular community program and the actual City budget at the time the applicable Joint Use Agreement(s) comes into force;
- (v) a recognition that should there be a minimum annual amount set out in the Joint Use Agreement(s) and should the value of the annual programming provided by the YMCA to the City in any one year exceed such annual minimum, any excess shall be credited towards the total value of the reimbursement, it being possible that the reimbursement could be satisfied in less than the twenty (20) years aforesaid;
- (vi) a recognition that should there be a minimum annual amount set out in the Joint Use Agreement(s) and should the value of the annual programming provided by the YMCA to the City in any one year be less than such annual minimum, any difference will be carried forward during the term of the Joint Use Agreement(s) and if in the twentieth (20th) year at the termination of this Agreement



the total amount credited to the YMCA is less than the minimum provided herein then the City shall make no further claim for this difference;

(vii) a recognition that the intent of the Joint Use Agreement(s) is that the YMCA will not necessarily abandon any of its programming commitments once the terms of the Joint Use Agreement(s) are completed;

(viii) an acknowledgment that the amount of the reimbursement owing by the YMCA to the City shall not bear any interest whatsoever.

Should the Public Works lands be conveyed to the City by Public Works for nothing or for an amount less than Eighteen (\$18.00) Dollars per square foot, the value of the reimbursement payable by the YMCA to the City shall be reduced to reflect the benefit received by the City from Public Works.

**B. CITY LANDS TO BE ACQUIRED**

Based on the understanding that the incorporation of the City lands to be acquired into the Wellness Centre will result in savings in construction costs in the range of Five Hundred Thousand (\$500,000.00) Dollars for the City and in the range of Three Hundred Thousand (\$300,000.00) Dollars for the YMCA, should the City acquire the City lands to be acquired for incorporation into the Wellness Centre the YMCA agrees to reimburse to the City an amount equal to Thirty-seven and one-half percent (37.5%) of the cost of the City lands to be acquired. Such monies shall be payable by the YMCA to the City within eighteen (18) months of the City taking possession of these additional lands. Provided, however, should the Wellness Centre not go ahead and this Agreement be terminated:

- (i) the YMCA shall make no claim with respect to such lands; and,
- (ii) the YMCA shall have no responsibility to pay to the City any money with respect to the acquisition of these lands.



**3.07 COMMUNITY CONTRIBUTIONS**

The parties acknowledge and agree that the funds raised by the YMCA, its agents or any of its YMCA Centre for Life partners shall be included as the YMCA's share of the Project funding and further that the funds raised by the older adults, or their agents, shall be included as the City's share of the Project funding.

**3.08 SHARED COSTS**

The costs to the parties of the legal Counsel regarding condominiums and the Construction Project Manager shall be shared equally between the parties.

**ARTICLE 4 -PROJECT CO-ORDINATING COMMITTEE**

**4.01 COMPOSITION**

The parties hereto agree to appoint a Project Co-ordinating Committee (hereinafter referred to as "the Committee") consisting of the following:

- 7 representatives of the YMCA
- 4 representatives of the City
- 1 representative of the Metro Centre Management Board
- 2 representatives of the Older Adult community.

**4.02 CHAIR**

The Chair of the Committee shall be appointed by the Committee provided that the Chair shall be a representative of either the YMCA or the City. The Chair of the Committee shall be a voting member of the Committee.

**4.03 RESPONSIBILITIES**

The responsibilities of the Committee are as stated in Schedule "F" attached hereto, or as may be agreed to by time to time by the parties hereto.



**ARTICLE 5 - PROJECT PLANNING, DESIGN AND TECHNICAL TEAM**

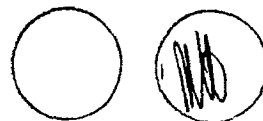
**5.01 COMPOSITION**

A Project Planning, Design and Technical Team (hereinafter called "the Team") shall be established and shall consist of the two divisions as shown on schedule "E" attached hereto. The Team shall be composed of the following and such other persons as the Committee deems appropriate:

- (1)(a) the Project Manager who shall be hired by the Committee;
  - (b) the Project Architect who shall be hired by the Committee's principal members, being the City and the YMCA;
  - (c) the General Contractor/Construction Project Manager;
  - (d) Quantity Surveyor.
- 
- (2)(a) the Director of Leisure Services of the City - an employee of the City; and
  - (b) the Executive Director of the YMCA - an employee of the YMCA.

**5.02 DUTIES**

- (i) The Project Planning, Design and Technical Team shall report to the Committee and shall be responsible for the technical aspects of the project. The Project Manager shall be responsible for the design, supervision and construction of the project. The Project Architect shall report to the Committee through the Project Manager. The General Contractor/Construction Project Manager shall report to the Project Manager. The Project Manager shall be responsible for managing and coordinating the day to day construction of the Project in consultation with the Architect, the Director of Leisure Services of the City and the Executive Director of the YMCA.
- (ii) The Director of Leisure Services of the City and the Executive Director of the YMCA shall be responsible for the development of programming, ongoing operation and central management of the completed facility. The



Project Manager shall work with the Director of Leisure Services and the Executive Director of the YMCA on the advance planning of the Project.

**5.03 COMMITTEE MEETINGS**

The Project Planning, Design and Technical Team members shall attend the meetings of the Committee as required.

**ARTICLE 6 - CONDOMINIUM**

**6.01 REGISTRATION**

The parties agree that the Project shall be registered upon completion of construction <sup>6 units</sup> as a condominium. The condominium shall consist of six (6) units together with common elements. Three (3) of the units shall, upon registration be owned by the YMCA for the YMCA Centre for Life component. Two (2) of the units shall, upon registration be owned by the City for the parking component. One (1) of the units shall, upon registration, be owned by the City for the Older Adult Centre component. The condominium documentation shall provide for an equality of votes amongst the unit holders.

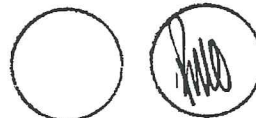
**6.02 LEGAL ADVICE**

The parties agree to jointly retain legal Counsel to advise upon and undertake those matters necessary to register the Condominium Corporation in accordance with this Agreement. It is agreed that the legal Counsel shall retain an Ontario Land Surveyor to prepare the necessary Condominium plans.

**ARTICLE 7 - INSURANCE**

**7.01 INSURANCE COVERAGE TO BE OBTAINED**

Each party will obtain and maintain throughout the term of this Agreement, insurance with insurers acceptable to the party opposite, to that extent that such insurance is





commercially acceptable and in the amounts agreed to in accordance with this paragraph and Schedule "D".

Liability insurance shall be obtained by the City with respect to claims arising out of the ownership, occupancy, use or maintenance of the assembled lands. The form of this coverage shall be that common to municipalities in Ontario. The amount of this insurance shall be not less than Eight Million (\$8,000,000.00) Dollars for each occurrence.

In addition, if the parties hereto agree, property insurance shall be obtained by the City to cover any damage, loss or destruction of the existing buildings, if any, as well as any subsequent loss of income. The amount and form of this insurance will be that purchased by prudent owners of similar property.

The policy(ies) shall name both The Corporation of the City of Sudbury and the YMCA as insureds. The premium for this insurance shall be shared equally by the City and the YMCA.

**7.02 REVIEW**

The policy limits agreed to will be reviewed annually by the YMCA and the City having regard to the claims history and the loss statistics of the previous year.

**7.03 NOTICE OF LOSS**

Each party shall notify the other of the first notice of loss or claim against the policies maintained pursuant to this Agreement. If such claims reduce the aggregate coverage amount available from those limits agreed to or as subsequently amended by agreement, then the party receiving the notice of loss may require that the other party acquire additional insurance coverage to ensure that the aggregate limits are maintained at the levels described above.

**7.04 NAMED INSURED**

The YMCA will cause the City to be named as additional named insured on all policies maintained by the YMCA pursuant to this Agreement and will provide the City with a



certificate(s) confirming that the YMCA has obtained coverage as described in this Agreement, before the commencement of construction and confirmation of the renewal of such policy or policies within sixty (60) days of their renewal date. Each policy of insurance will contain provision that the same will not be cancelled or not renewed unless the City is given thirty (30) days notice of such intended cancellation or non-renewal.

The City will cause the YMCA to be named as an additional named insured on all policies maintained by the City in respect of the Project, and will provide the YMCA with a certificate(s) confirming that the City has obtained coverage as described in this Agreement, before the commencement of construction and confirmation of the renewal of such policy or policies within sixty (60) days of their renewal date.

#### **ARTICLE 8 - SECURITY**

##### **8.01 SECURITY OF YMCA'S INVESTMENT DURING CONSTRUCTION**

The City and the YMCA both recognize and agree that the development of the Project on a condominium basis as anticipated in Articles 2 and 6 hereof shall result in the Project being developed initially on lands which are presently owned and other lands which will be acquired by the City and all of which lands will remain registered in the name of the City until such time as the condominium is registered. At the same time the City and the YMCA recognize and agree that both will be required to contribute monies to the Project for the construction which will take place on the lands prior to the registration of the condominium. Recognizing all of the above, the City and the YMCA agree that from the moment that the conditions precedent as defined in Section 2.02 and Schedule "D" hereto have been satisfied and/or waived, the City shall hold the title to the Project lands and all improvements constructed and/or located thereon as trustee of both the City and the YMCA as their respective financial contributions and/or other interests may appear from time to time.



Further, the City agrees that upon the Project reaching the state of completion which will allow the registration of the condominium, the City shall execute any and all documents as may be necessary and needed in order to complete the registration of the condominium.

**ARTICLE 9 - REGISTRATION OF THIS AGREEMENT**

9.01 Upon execution of this agreement, the parties hereto agree that this agreement shall be registered against those lands of the Project owned by the City. As the City requires additional lands for the Project, this agreement shall be registered by way of Notice of Agreement against those lands. This agreement shall remain on the title at the Land Registry Office until the condominium is registered or this agreement is otherwise terminated.

**ARTICLE 10 - DISPUTE RESOLUTION**

**10.01 RESOLUTION THROUGH NEGOTIATION**

In the event of any dispute or controversy between the parties with respect to or arising out of this Agreement, the parties will attempt to resolve such dispute or controversy by negotiation and discussion.

**10.02 PROCEDURE**

If the parties are unable to resolve any such dispute or controversy through negotiation, then either the City or YMCA may refer such dispute or controversy to a sole expert or panel of experts selected by agreement between the City and the YMCA as hereinafter provided, to act as the adjudicator (hereinafter referred to as "the adjudicator"), for resolution on the following terms and according to the following procedures:

- (a) the City Manager for the City and the Executive Director for the YMCA will identify a matter as eligible for dispute resolution and will be of written notice to the other party to the dispute of their decision to refer such matter to dispute resolution;



- (b) the party requesting that a matter be referred to dispute resolution has two (2) months from the date of written notice of the reference, or such other period as the parties may agree within which to schedule a dispute settlement meeting. No issue which has been the subject of dispute resolution can be the subject of a second dispute resolution without the consent of both the City and the YMCA;
- (c) the dispute settlement process will not be a quasi judicial "trial type" process. Lawyers may but need not represent either party at such meetings. It will be the responsibility of the parties to ensure that the facts, issues and argument are clearly presented to allow the adjudicator to make a decision. The adjudicator will have control over the procedure at any dispute settlement meeting, within the limits of the rules described herein, and the adjudicator may direct the parties to obtain and present additional information before making a decision;
- (d) the adjudicator will be selected by agreement of the City and the YMCA no later than thirty (30) days following delivery of the notice that a matter will be referred to dispute resolution as described in sub-paragraph (a) above. In the absence of agreement within such thirty (30) day period, then each of the City and the YMCA will within a further thirty (30) days give notice in writing of the person whom they elect to nominate to the panel and the persons nominated by each of the City and the YMCA shall select a third person, all of whom will sit as the adjudicator on such matter in dispute.

#### 10.03 DECISION BINDING

The decision of the adjudicator will be final and binding upon the parties and there will be no appeal from such decision. Where a matter has been referred to dispute resolution, the successful party will be entitled to be reimbursed for the reasonable



costs incurred by it (including interest on amounts for which reimbursement was not made at the time claimed) as agreed or fixed by the adjudicator. This will not include the costs of referring the matter to dispute resolution which will be dealt with as described below.

**10.04 COST OF DISPUTE RESOLUTION**

Each of the parties will bear their own costs of any matter sent to dispute resolution, save and except for the costs of the adjudicator which will be shared equally by the parties to the matter referred to dispute resolution.

**ARTICLE 11 - TERMINATION**

11.01 This Agreement and the obligations of the parties hereto shall be terminable at such time as the conditions precedent in Schedule "D" are not satisfied or not waived, or at such other time as the parties hereto may agree.

**ARTICLE 12 - GENERAL PROVISIONS**

**12.01 MUNICIPAL CONFLICT OF INTEREST**

The City hereby declares that no member of City Council has any pecuniary interest, direct or indirect, as defined by the Municipal Conflict of Interest Act, in this Project.

**12.02 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements whether written or oral.

**12.03 AMENDMENTS**

No amendment to this Agreement will be effective unless in writing and signed by both parties to this Agreement.

Two circular stamps or signatures are located at the bottom right of the page. The first is a simple circle, and the second contains a handwritten signature.

12.04 **ENUREMENT**

This Agreement will enure to the benefit of the parties and be binding upon their respective successors and assigns, provided that a party will not be permitted to assign or transfer its rights and obligations under this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld.

12.05 **NOTICE**

Where notice is required or permitted to be given by the YMCA to the City pursuant to this Agreement, such notice shall be in writing and shall be deemed to have been sufficiently given to the City, if delivered in person or sent by registered mail to the City Manager at the following address:

Box 5000, Station "A"  
Civic Square Complex, 4th Floor  
SUDBURY ON P3A 5P3

Where notice is required or permitted to be given by the City to the YMCA pursuant to this Agreement, such notice shall be in writing and shall be deemed to have been sufficiently given to the YMCA, if delivered in person or sent by registered mail to the YMCA at the following address:

185 Lloyd Street  
SUDBURY ON P3B 1P2

12.06 **HEADINGS**

The division of this Agreement into articles, paragraphs and sub-paragraphs and insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.



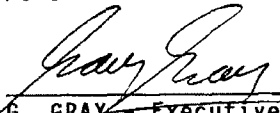
**12.07 FORCE MAJEURE**

In the event that either party hereto is delayed or prevented from performing any covenant hereunder by reason of unforeseen circumstances, then such party so prevented shall not be held responsible for damages caused by its delay or failure to perform such covenant.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their corporate seals under the hands of their duly authorized Officers in that behalf as of the day and year first above written.

**SUDBURY YOUNG MEN'S CHRISTIAN ASSOCIATION**

Per:  (Title)  
P. O'MALLEY - President

Per:  (Title)  
G. GRAY - Executive Director

**THE CORPORATION OF THE CITY OF SUDBURY**

Per: \_\_\_\_\_ (Title)

Per: \_\_\_\_\_ (Title)

**SCHEDULE "A"**

**SCHEDULE FOR DESCRIPTION:**

**THE CORPORATION OF THE CITY OF SUDBURY LANDS  
(ORIGINAL CITY LANDS):**

- FIRSTLY:** South 40 feet of Lot 26, Block A, Plan 3 S,
- SECONDLY:** North half of Lot 27, Block A, Plan 3 S,
- THIRDLY:** Part of Lot 29, Block A, Plan 3 S, more particularly described as follows:
- Commencing** at a point in the westerly limit of said lot, said point being 19.0 feet measured southerly along said western limit from the north-westerly angle of Lot 29;
- THENCE** easterly and parallel to the northern limit of said lot, 120.0 feet more or less to the eastern limit of said lot;
- THENCE** southerly along said eastern limit 31.0 feet more or less to the south-easterly angle of said lot;
- THENCE** westerly along the southerly limit of said lot 120.0 feet more or less to the south-westerly angle of said lot;
- THENCE** northerly along the westerly limit of said lot 31.0 feet more or less to the place of beginning.
- FOURTHLY:** Lot 30, Block A, Plan 3 S,
- FIFTHLY:** Lot 33, Block A, Plan 3 S  
Dated: 29th day of March, 1887  
Registered: 16th day of August, 1887  
City of Sudbury,
- SIXTHLY:** Part of Block F, Plan 2 S  
Being Part 7, Plan 53R-10349  
City of Sudbury,
- SEVENTHLY:** Part of Lots 1,2,3,5,6 and 7 and Part of a lane (closed), Plan 40 S,  
Being Parts 8, 9, 10, 11, 12, 13, and 14, Plan 53R-10349  
City of Sudbury,
- EIGHTHLY:** Lots 3, 4, 5, 6 and 10, Part of Lots 1, 2, 7, 8 and 9 and part of a lane (closed), Plan 40 S,
- NINTHLY:** Part of Lot 5, Concession 3, Township of McKim, City of Sudbury (lanes),
- TENTHLY:** Part of Brady Street, (unopened), Plan 2 S.





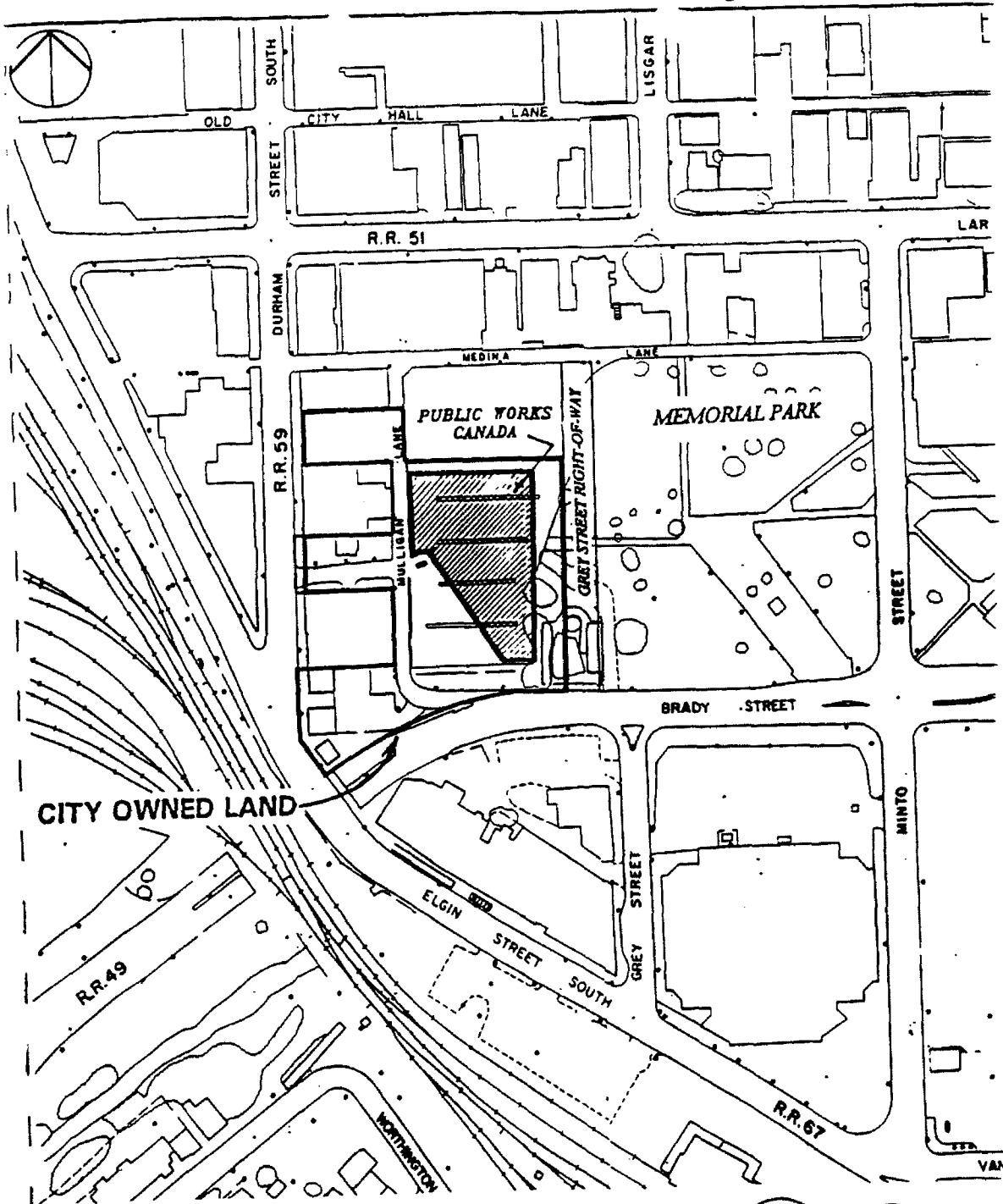
**SCHEDULE "A" - cont'd**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA LANDS  
(PUBLIC WORKS LANDS):**

- FIRSTLY:** Part of Block F, Plan 2 S being Parts 1 and 2, Plan 53R-10271,
- SECONDLY:** Part of Lots 1, 2, 7, 8 and 9 and part of a lane (closed), Plan 40 S,  
Being Parts 3, 4, 5, 6, 7 and 8, Plan 53R-10271,  
City of Sudbury.



SCHEDULE "B"



**SCHEDULE "C"**

The following words and phrases shall have the following meaning in this Agreement:

1. **"Lands"** means the lands described in Schedule "A".
2. **"Committee"** means the Project Co-ordinating Committee.
3. **"Older Adult Centre"** means a community focal point within which older persons as individuals or groups come together for services and activities that enhance their dignity, support their independence, encourage their involvement in and with the community and promotes their physical, spiritual and intellectual well being.
4. **"Program Time"** includes:
  - (1) The provision of direct programming by the YMCA at the Wellness Centre, or
  - (2) the provision of programs by the YMCA at the Older Adult Community Recreation Centre, or
  - (3) the operation of a City facility such as a pool, fitness centre or day camp by the YMCA.
5. **"Project"** means the entire undertaking of the City and the YMCA as anticipated by this Agreement and includes the condominium which is included as a component of the undertaking.
6. **"Wellness Centre"** means the YMCA Centre for Life, the Older Adult Centre and the parking component.
7. **"YMCA Centre for Life"** means a centre which houses a combination of facilities, services and human resources that contributes to the collaborative effort of community associations in a conceptual approach to wellness or well being. It is an active approach through which the individual becomes aware of holistic health perspective and makes choices towards a healthier existence. Wellness may include the following six dimensions:
  - (1) physical,
  - (2) sociocultural,
  - (3) intellectual,
  - (4) emotional,
  - (5) occupational and
  - (6) spiritual



SCHEDULE "D"

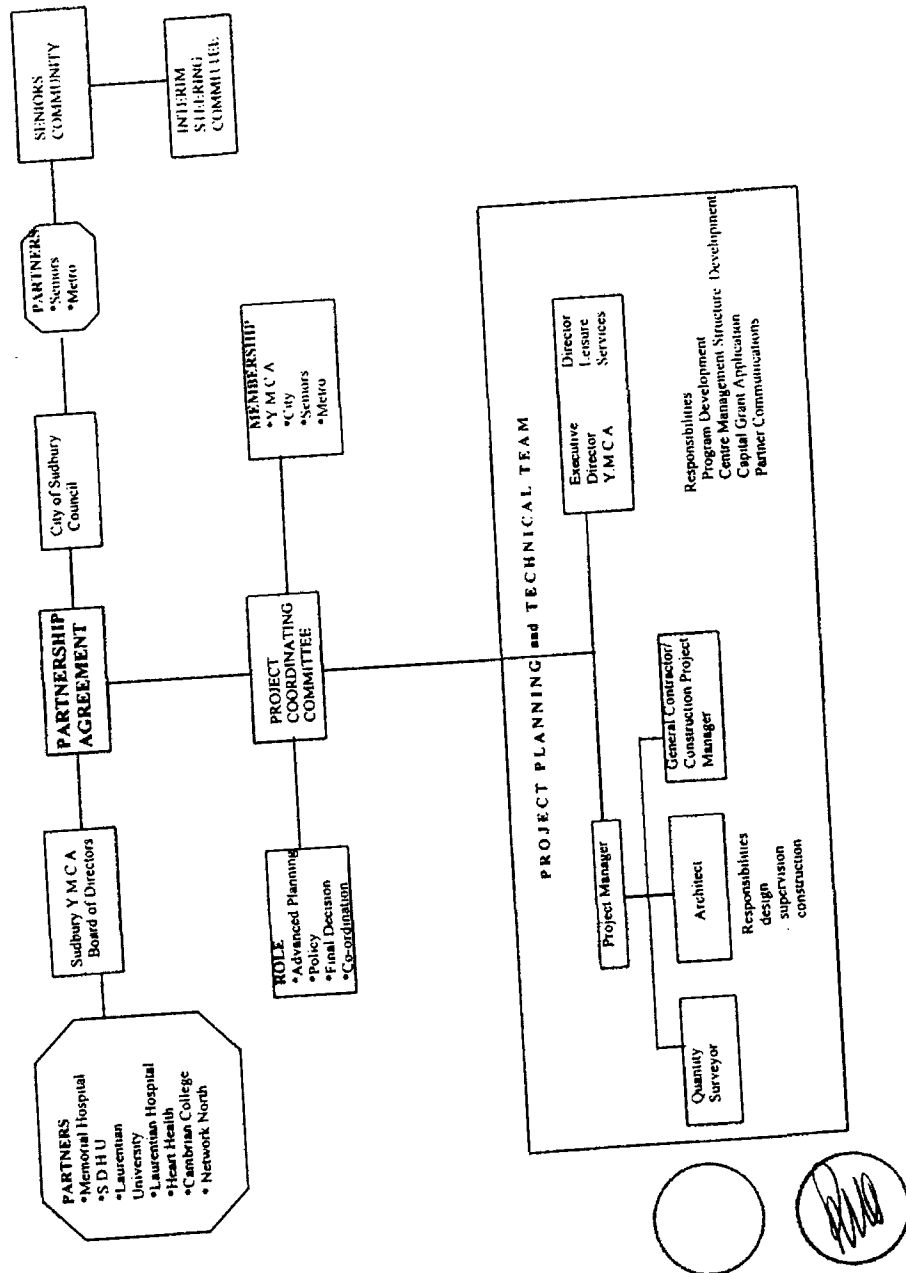
CONDITIONS PRECEDENT

1. The acquisition by the City, at its own expense, of a good and marketable title to those lands currently owned by Her Majesty the Queen in Right of Canada and described as Part of Block F, Plan 2 S, being Parts 1 and 2, Plan 53R-10271, and Part of Lots 1, 2, 7, 8 and 9 and part of a lane (closed), Plan 40 S, Being Parts 3, 4, 5, 6, 7 and 8, Plan 53R-10271, City of Sudbury.
2. The City shall enter into an Agreement with the Metro Centre Management Board to secure its financial contribution of 1.2 Million Dollars towards the parking component of the Project. The parties hereto acknowledge and agree that the Agreement between the City and the Metro Centre Management Board securing the interest of the Metro Centre Management Board may be registered against the title of the parking component of the Project.
3. The YMCA shall have satisfied the City Manager that it has collected or has a firm commitment for a minimum of 11.2 Million Dollars from government grants, bridge and mortgage financing, and community contributions. The money collected shall be held by the YMCA and deposited into the special account in the manner referred to in Paragraph 3.06.
4. The parties shall within thirty (30) days of the execution of this agreement acquire and maintain commercially acceptable insurance with limits agreeable to both parties.



# SCHEDULE "E"

## YMCA WELLNESS CENTRE



**SCHEDULE "F"**

**PROJECT CO-ORDINATING COMMITTEE**

The Project Co-ordinating Committee shall meet regularly and:

- be responsible to the Board of Directors of the YMCA and City Council
- ensure all proper procedures are followed to ensure the success of the Project
- co-ordinate the advanced planning of the project
- co-ordinating the preparation of documentation necessary to define the needs of the various participants and the Project as a whole and relating same to the building design and construction sub-committee
- considers and approves all preliminary and final design of the entire Project
- approves or hires those members of the Project Planning, Design and Technical Team who will join the Director of Leisure Services of the City and the Executive Director of the YMCA on the Team.
- co-ordinates the work of all sub-committees, including:
  - building design and construction
  - centre management
  - fund raising, including capital grant applications to senior levels of government
  - communication/public relations
- develop policy and guidelines for the entire Project.
- considers the hiring of a General Contractor or the use of a Construction Manager.
- develop guidelines for the development of parking facilities in the Project and the use of such parking facilities, including agreement whereby certain of the capacity of such parking facilities will be dedicated for use by YMCA members.

