

THIS AMENDED AND RESTATED JOINT USE AGREEMENT

made ~~this 24th~~ day of ~~August, 2023~~.

BETWEEN:

THAMES VALLEY DISTRICT SCHOOL BOARD,
(hereinafter referred to as the "Thames Valley Board")

OF THE FIRST PART

and

**ENGLISH LANGUAGE SEPARATE DISTRICT SCHOOL BOARD
NO. 38, OPERATING AS THE LONDON DISTRICT CATHOLIC
SCHOOL BOARD**
(hereinafter called the "Catholic Board")

OF THE SECOND PART

and

THE MUNICIPALITY OF STRATHROY-CARADOC
(hereinafter called the "Municipality")

OF THE THIRD PART

WHEREAS the Parties entered into an agreement dated April 5, 2001 entitled the Joint Use Agreement (the "**Prior Joint Use Agreement**") in order to set out the rights, and responsibilities of each of the parties hereto for the mutual use, maintenance and improvement of the Facilities;

AND WHEREAS the Parties wish to make certain amendments to the Prior Joint Use Agreement and do so by entering into this Amended and Restated Joint Use Agreement (the "**Joint Use Agreement**");

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the Thames Valley Board, the Catholic Board and the Municipality, agree as follows:

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1.0 DEFINITIONS

1.1. For all the purposes of this Agreement, terms defined in this section shall have the following meanings:

- (a) "Agreement" means this Amended and Restated Joint Use Agreement and all schedules attached hereto and all amendments made hereto and thereto by written agreement between the Parties;
- (b) "Arbitration Act" means the Arbitration Act, 1991, S.O. 1991, c.17 or as the same may be amended from time to time and the regulations pursuant thereto;
- (c) "Arena" means the arena and appurtenant areas as set out in purple, on Schedule "B" hereto;
- (d) "Boards" means collectively the Catholic Board and the Thames Valley Board;
- (e) "Catholic Board" means English Language Separate District School Board No. 38, operating as the London District Catholic School Board;
- (f) "Commercial Activity" includes and means any activity from which revenue is generated and includes without limitation, display of signs, vending machines and collection of revenue from any source;
- (g) "Facilities" means the various buildings, structures, constructions and developments undertaken and completed on or comprising part of the Lands and includes without limitation, the Shared Parking Area, the Grounds, the Sports Fields, the Arena and the Schools as shown on Schedule "B" hereto;

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- (h) "Grounds" means those portions of the Facilities such as sidewalks, lawns, gardens, Shared Parking as herein defined, and other open areas, not included in the Schools, the Sports Fields, the Ponds or the Arena and designated in grey on Schedule "B" hereto;
 - (i) "Joint Facilities" means those portions of the Facilities which will be subject to the sole control of either the Boards or the Municipality, but which will be used by the other Parties to this Agreement and includes without limitation, the Arena, the Sports Fields and the Schools;
 - (j) "Joint Use Committee" shall have the meaning as set out in Article 12.0 hereof;
 - (k) "Lands" means the lands described as Part Lot 25, Concession 2, S.E.R. , Township of Adelaide, County of Middlesex as more particularly described in Schedule "A" hereto and, for purposes of this Agreement, shall not include any Facilities located thereon;
 - (l) "Law" and "Laws" shall mean and include all applicable law, the by-laws, regulations, requirements, orders, notices, policies and directions of all governmental or regulatory authorities and any other persons having jurisdiction over the Lands, the Parties or any of them;
 - (m) "Municipality" means the Municipality of Strathroy-Caradoc and any successor thereto;
 - (n) "Operating Costs" shall mean and include all costs properly attributable, in accordance with generally acceptable accounting practice, to the maintenance and

operation of the any portion of the Facilities, including, but not limited to amounts paid or incurred by the Boards or the Municipality for:

- (a) standard all risk property insurance;
 - (b) third party general liability insurance;
 - (c) maintenance;
 - (d) lighting, fire alarms and annunciation, loudspeakers, public address and music broadcasting system;
 - (e) repairs and replacements to and maintenance and operation of the Facilities
 - (f) all utilities and similar services; and
 - (g) other similar costs exclusive of real property taxes and assessments of a capital nature;
- (o) "Party or Parties" means and includes the parties to this Agreement, or any one of them;
- (p) "Ponds" means that area including the ponds as designated as the Ponds and shown in green on Schedule "B" hereto;
- (q) "Project Development Agreement" means an agreement between the Parties hereto setting out the agreement between the Parties relating to the development of the Lands and the construction of the Facilities dated as of November 6, 2000;
- (r) "Property" means and includes the Lands and the Facilities included thereon;

- (s) "Proportionate Share" means with respect to each Party, its proportionate share of the costs of the development of the Lands and the construction of the Facilities as set out in section 5.2 of the Project Development Agreement, being more specifically as follows:
- A. In respect of the Arena - the Municipality as to 100%
 - B. In respect of the Schools - the Boards as to 100%
 - C. In respect of the Sports Fields - the Municipality as to 100% of the costs of Sports Field A as shaded in blue on Schedule "B" hereto; and, as to the balance of the Sports Fields as shaded in orange/brown on Schedule "B" hereto the Thames Valley Board - 50% and the Catholic Board - 50%
 - D. As to the balance of the Facilities, including without limitation, the Grounds, the Shared Parking Area and the Ponds: the Municipality – 33 1/3%; the Thames Valley Board – 33 1/3%; and, the Catholic Board – 33 1/3%
- (t) "Secondary Schools" and "Schools" means the secondary Schools and appurtenant areas constructed pursuant to the Project Development Agreement as shown in yellow on Schedule B hereto;
- (u) "Shared Facilities" means, without limitation, the Facilities that will be subject to mutual control of the parties, including without limitation the Grounds and the Shared Parking Area marked in grey and red, respectively, on Schedule "B" hereto;
- (v) "Shared Parking Area" means and includes the parking area shown in red on Schedule "B" hereto;

(w) "Sports Fields" means the sports fields constructed as contemplated by the Project Development Agreement and designated on Schedule "B" hereto, and "Sports Field A" means that area shown in blue on Schedule "B" hereto and "Sports Field B" means that area shown in orange/brown on Schedule "B" hereto; and

(x) "Thames Valley Board" means the Thames Valley District School Board.

2.0 SCHEDULES

2.1. The following Schedules form part of this Agreement:

Schedule "A" - Lands

Schedule "B" - Site Plan

Schedule "C" - Reference Plan

3.0 BACKGROUND

3.1. It is agreed that the Thames Valley Board, the Catholic Board and the Municipality shall cooperate in the use of the various elements of the Facilities in order to provide for the mutual benefit and shared use of the separate elements thereof, including without limitation, the Arena, the Sports Fields and the Schools, and the provisions of this Agreement shall be construed in accordance with this principle.

3.2. Notwithstanding any of the terms of this Agreement, the development and the joint use of the Facilities by the Thames Valley Board, the Catholic Board and the Municipality shall not constitute a partnership between the Parties for any purpose, nor shall it constitute either Party agent for the other, nor any other relationship whereby either could be liable for any act or omission of the other, unless specifically provided in this Agreement. Neither Party shall have any authority

to act for the other, or to incur any obligation on behalf of the other, save as specifically provided by this Agreement. Each Party covenants to indemnify the other from all claims, losses, costs, charges, fees, expenses, damages, obligations and responsibilities incurred by the other by reason of any action or omission of the other outside the scope of the authority specifically provided by this Agreement.

4.0 TERM AND TERMINATION

4.1. This Agreement shall take effect on the date set out first above and shall continue in full force and effect for a period of ten (10) years, with successive ten (10) year renewals on the same terms and conditions unless, at least one year prior to the expiry of any such term, any Party gives written notice that it does not wish to renew this Agreement, or until termination in accordance with the terms of this Article 4.0.

4.2. If any Party shall at any time sell, convey, or transfer, lease or enter into any agreement to sell, convey, transfer or lease its interest in the Lands and the other Party or Parties, as the case may be, do not purchase that interest in accordance with Article 18.0 hereof, then at the option of the Party who continues to hold an interest in the Lands, this Agreement shall be at an end and the provisions for joint use of the Facilities shall be at an end, and the Party selling such interest shall compensate the other for any loss of use or increased costs of use of the Arena, the Sports Fields or the Schools, as the case may be.

4.3. If at any time this Agreement is terminated for any reason, the Municipality shall provide the Boards with a permanent easement over such part of the Shared Parking Area as may be reasonably required for purposes of ingress and egress for the buses and offloading of the students of the Boards, together with such ancillary uses connected therewith as may be reasonable in the

circumstances. This paragraph shall survive the termination of this Agreement, until such time as an easement for such purposes is completed.

4.4. If at any time, any Party determines that it wishes to partition its interest in the Lands, such interest shall be partitioned as follows:

- (a) The Municipality shall take sole title and interest in Part 1, Plan 33R-14372, as shown on Schedule "C" hereto; and,
- (b) The Boards shall take sole title and interest in the balance of the Lands as tenants in common

and with the exception of the provisions of this Article 4.0, Article 17.0 and Article 18.0 hereof which shall continue in full force and effect, the provisions of this Agreement shall be at an end. As part of the arrangements intended to survive the termination of the Agreement, the parties agree that although the Ponds are owned by the Municipality, the Ponds shall remain part of the storm management infrastructure of the Municipality and shall continue to service the needs of the Lands until such time as storm sewers are provided for purposes of the Lands.

5.0 USE OF FACILITIES

5.1. Subject to the further provisions of this Agreement and any other written agreements between the Parties, the Catholic Board and the Thames Valley Board shall maintain, operate and have exclusive control of the Schools, and the Municipality shall maintain, operate and have exclusive control of the Arena and the Ponds.

5.2. The Catholic Board and the Thames Valley Board shall have control of Sports Field B and shall use the Schools and Sports Field B for purposes authorized by the Education Act and ancillary purposes which are not inconsistent with the intent and spirit of this Agreement. The Municipality

shall have control of Sports Field A and shall use the Arena and Sports Field A for purposes of the community and such ancillary purposes which are not inconsistent with the intent and spirit of this Agreement.

5.3. The Catholic Board and the Thames Valley Board have entered into an agreement dated December 16, 2008 entitled Amended and Restated Secondary Schools Agreement (the “**Schools Agreement**”) with respect to the use and maintenance of the Schools.

5.4. It is agreed by the Parties hereto that the parking areas included in that area shown on Schedule “B” as the Arena shall be under the exclusive control of the Municipality and the parking areas included in that area shown on Schedule “B” as the Schools shall be under the exclusive control of the Boards, and the respective Parties covenant and agree that they shall enforce all applicable parking and fire access rules and regulations with respect to their area of control.

5.5. Each Party shall have for itself and its officers, agents, employees, students and customers, the non-exclusive right to use and enjoy the Shared Facilities, in common with all others entitled to them, in accordance with this Agreement. All decisions with respect to the Shared Facilities shall be by mutual consent.

5.6. No portion of the Property shall be used or occupied by any person in a manner which is likely to damage or injure any person or Property or in a manner which will unreasonably interfere with the use and enjoyment by any Party of any portion of the Property which it is entitled to use or occupy. In addition to the foregoing, the Boards and the Municipality agree that they should use their respective premises and the Shared Facilities at all times in a manner that is compatible with the safe and proper operation of the Schools, of the Sports Fields and of the Arena.

5.7. The Shared Parking Area shall be used solely for the purposes of: ingress; egress; unloading and loading of busses of the Boards; parking motor vehicles on a daily or temporary

basis by the Parties, their employees, students and invitees; ~~As at the date hereof, the area of the Shared Parking Space shown on Schedule B hereto has been designated by the Parties as such an area.~~

Deleted: and, one or more designated smoking areas, unless otherwise agreed to by the Parties in writing. The Parties agree to designate from time to time one or more portions of the Shared Parking Area to be used as a smoking area for employees, students and invitees of the Parties.

5.8. The Shared Facilities may be used from time to time for purposes of providing pedestrian and/or vehicular access and egress from various portions of the Lands and Facilities, the maintenance and operation of the Facilities and the Lands and such other uses as may be agreed between the Parties from time to time.

5.9. Notwithstanding the exclusive control of the Arena by the Municipality and the exclusive control of the Schools by the Boards, each agrees with the other to enter into agreements for the use by the other of those portions of the Joint Facilities controlled by the other, in a manner which does not interfere with the programmes of the other. If either of the Boards requires the use of the Schools in a manner which displaces regularly scheduled programmes of the Municipality, such Board shall give two weeks written notice to the Municipality in order that the Municipality may inform its participants. If such notice is not given, subject to the provisions of section 5.10 hereof, neither of the Boards may pre-empt contractual uses by the Municipality. If the Municipality requires the use of the Arena in a manner which displaces regularly scheduled programmes of either of the Boards, the Municipality shall give two weeks written notice to the Board(s) affected in order that the Board(s) may inform its participants. If such notice is not given, subject to the provisions of section 5.10 hereof, the Municipality may not preempt contractual uses by the Board(s).

5.10. In the event that either of the Municipality or the Boards is unable to provide the Schools or the Arena as otherwise agreed, due to circumstances beyond their control, the Municipality or the Board shall provide such notice as possible and shall take all reasonable steps to accommodate alternate arrangements, but shall not liable for failure to do so.

5.11. The Municipality and the Boards shall enter into such agreements consistent with the practice currently established and as may be amended from time to time by the Parties, with respect to arrangements for the use of the Arena by the Boards and of the use of the Schools by the Municipality and use of the balance of the Joint Facilities by each other.

5.12. It is acknowledged by the Parties that it is anticipated that the Municipality and the Boards may enter in agreements from time to time with respect to Commercial Activity within the Shared Facilities and with respect to Commercial Activity within the Arena by the Boards or either of them, within the Schools by the Municipality, or by any Party, within the one of the Sports Fields controlled by the other, and any net revenue so generated shall be shared as agreed by the Parties. Any Commercial Activity in the Shared Facilities shall be prohibited unless consented in writing by each Party, provided that such consent shall not be unreasonably withheld.

5.13. No portion of the Schools or the Arena may be used or occupied by the Parties which do not exercise control over such Facility, for any purpose except as expressly permitted by this Agreement, without the express written approval of the controlling Parties. No portion of the Sports Fields may be used by any Party except as permitted hereunder, without the express written approval of the other Parties.

5.14. Notwithstanding any provision of any agreement between the Parties relating to the Facilities, no portion of the Schools, the Sports Fields or the Shared Facilities shall be occupied or used by any person for any of the following activities at any time:

- (a) the service and/or consumption of alcoholic beverages, unless duly licensed;
- (b) gambling or other similar activities;
- (c) smoking and vaping

- (d) canvassing and/or soliciting of any nature and kind; and
- (e) any other activity in the aspect of which directly or indirectly interferes with the safe and proper operation of the Schools or the Arena.

5.15. For the purposes of section 5.13, the Parties agree that any Party may reasonably withhold its approval (the "**Approving Party**") to a use proposed by the other Party (the "**Proposed Use**") in any of the following circumstances:

- (a) the Approving Party, acting reasonably and having regard to all circumstances, determines that any material aspect of the Proposed Use or any potential user groups or individuals is incompatible with the safe and proper operation of the Schools or Arena;
- (b) the Approving Party, acting reasonably and having regard to all circumstances, determines that the Proposed Use or any potential user groups or individuals would result in the increase in the costs of operating the Schools or the Arena as the case may be (unless the party requesting the Proposed Use agrees in writing to be solely responsible for such increased costs);
- (c) the Approving Party, acting reasonably and having regard to all the circumstances, determines that the Proposed Use would result in unreasonable or excessive wear and tear to the building or any part thereof, or would place an unreasonable or excessive burden on the building or any part thereof, including any utility or service (unless the Party requesting the Proposed Use agrees in writing to be solely responsible for the costs of repairing such excessive wear and tear);

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

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

6.0 JOINT USE PROVISIONS

6.1. The Boards shall make available to the Municipality, without charge to the Municipality or its invitees, as agreed between the Parties, the following items and facilities within the jurisdiction of the Boards for use by the Municipality or its invitees, at the Schools, provided that such use does not interfere with the normal educational function of the Schools:

- (a) indoor facilities including gymnasiums, change rooms, classrooms and related facilities and such other indoor facilities of the Schools, as approved by the Boards;
and
- (b) large items of sports equipment including volleyball standards, nets, basketball score clock, floor hockey nets, gymnastics equipment, badminton standards, nets, and other equipment available at the Schools, as approved by the Boards, for Municipality programmes operating at the Schools.

6.2. The Municipality shall make available to the Boards, or either of the Boards, as the case may be, without charge to such Board(s), or its invitees, as agreed by the Parties, the following items and facilities within the jurisdiction of the Municipality, for use at the Arena by the Boards, or either of the Boards, as the case may be, its students and invitees:

- (a) the Arena and the change rooms and seating areas located therein; and
- (b) such Arena equipment as is approved by the Municipality for programmes operated by the Boards or either of the Boards, as the case may be, at the Arena;

6.3. The foregoing paragraphs are premised on the principle that the usage by the Municipality of the Schools and the usage of the Arena by the Boards shall occur free of charge by all parties.

6.4. ~~Each of the Boards and the Municipality shall be responsible for their own programmes held in the Joint Facilities, including without limitation, liability insurance, supervision, and all costs associated with their respective programmes unless otherwise indicated herein and shall require the programmes run in the Joint Facilities to comply with all safety, health operation and other standards and practices of the Boards and the Municipality and otherwise with all Laws.~~

Deleted: <#>be of relatively similar dollar value for the total hours of usage, based on those rates established and agreed upon by the Boards and the Municipality, from time to time, for the Arena and for the Schools, failing which either the Board(s) or the Municipality shall compensate the other for such additional value of usage.... ¶
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6.5. It is agreed that groups in the community may use the Joint Facilities, if the group is accepted to use the Joint Facilities by the Municipality and the Boards and any charge for the use of such Joint Facilities shall be paid to the Parties in accordance with their Proportionate Share.

7.0 MAINTENANCE OF FACILITIES

7.1. The Boards shall be responsible for the maintenance and Operating Costs of the Schools and Sports Field B, and the Municipality shall be responsible for the maintenance and Operating Costs of the Ponds, the Arena and Sports Field A.

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7.2. Subject to paragraph 7.4 hereof, the Boards shall be responsible for any enhancements or capital improvements to the Schools or to Sports Field B, and the Municipality shall be responsible for any enhancements or capital improvements to the Ponds, the Arena and Sports Field A, provided that all reasonable efforts shall be made in order that the constructions of any such

enhancements or capital improvements shall not unduly interfere with the use of the balance of the Lands.

7.3. The Boards and the Municipality shall be responsible for any damage to the Schools, Sports Fields or the Arena sustained as a result of their own use of such Facilities, provided that in no case shall any party be responsible to the other(s) for: normal wear and tear; or, damage caused by the willful or negligent act or omission of the other parties, their agents, employees, invitees or others for whom such other parties are responsible at law.

7.4. The Thames Valley Board, the Catholic Board and the Municipality shall be jointly responsible for the replacement of exterior athletic equipment used by the Parties on Sports Field A and Sports Field B, and the decisions with respect to the replacement and repair of any equipment for which reimbursement will be sought from the other party, must first be approved by the Joint Use Committee.

7.5. The Thames Valley Board and the Catholic Board shall be responsible for the maintenance of the Schools, and the Municipality shall be responsible for the maintenance of the Arena.

7.6. The Thames Valley Board, the Catholic Board and the Municipality through the Joint Use Committee, shall co-operate in retaining services for maintenance for the Shared Facilities and Sports Fields, and except where any Party is obliged by other agreements, tenders shall be sought by all three Parties, acting jointly, for the provision for any particular service for the Shared Facilities and Sports Fields (excluding the Schools, the Ponds and the Arena). Any contract for such services shall be determined by the Joint Use Committee. No Party shall contract for separate services for any particular part of the Facilities (except for the Arena or the Schools), if such services are required for other parts of the Facilities.

7.7. The Parties shall be responsible for the Operating Costs and costs of repair, maintenance and improvements to the Shared Facilities in accordance with their Proportionate Share.

7.8. The Sports Fields, the Shared Facilities and exterior portions of the Arena and Schools, shall be repaired, and maintained in accordance with the minimum standards determined by the Joint Use Committee.

7.9. The Parties agree that the Municipality shall be responsible for ensuring the arena is maintained, repaired and/or reconstructed according to average standards applied to Municipal properties of comparable age, and that the schools shall be maintained, repaired and/or reconstructed at all times in a manner equivalent to the average standards of the Boards as applied to buildings of the Boards of comparable age.

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

7.11. Except as expressly set out in this Agreement, the Parties agree that there shall be no construction, alteration, improvement, addition, replacement, reconstruction or redevelopment of all or any of the Shared Facilities, the Sports Fields, the exterior of the Schools or the exterior of the Arena, or any demolition of any Shared Facilities or the Joint Facilities (in each and any case "**Further Work**"), unless such Further Work is approved by all of the Parties, which approval may not be unreasonably withheld by any Party, but which may be subject to the satisfaction of reasonable conditions established by any Party giving such approval.

7.12. The Parties agree that any Further Work shall comply with the following, unless specifically waived by the Parties hereto in writing:

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- (a) Further Work will not materially affect the use of those parts of the Facilities which are not the subject of that Further Work;
 - (b) The plans and specifications for Further Work shall be consistent with the design of and materials used for the then existing Facilities;
 - (c) The services or the servicing systems that provide any service to any portion of the Facilities shall not be unduly disturbed, interfered with, interrupted or damaged. The tolerance's maximum capacities of such services or servicing systems shall not be exceeded. The demand or load reasonably expected to be placed on any such services or servicing systems as a result of such Further Work shall not reduce or otherwise impair the availability or continued use and enjoyment of the existing services, servicing system or capabilities thereof to the balance of the Facilities;
 - (d) All Further Work shall be performed and completed in accordance with all Laws;
 - (e) Adequate measures shall be taken so that: any noise or vibration resulting from the performance of the Further Work; any interference or loss of use and enjoyment caused to any of the Parties; and/or, any interference caused to the pedestrian or vehicular access and egress from any portion of the Facilities, is reduced to and maintained at all times at reasonable levels;
 - (f) Such Further Work shall not result, directly or indirectly, in the cancellation or threat of cancellation of any policy of insurance maintained by any of the Parties. If the Further Work results in an increase in the premium cost of any policy of insurance placed by or on behalf of any of the Parties, the Party(s) requiring such Further Work to be performed shall pay or reimburse the other Parties for such increase;

- (g) Such Further Work shall be performed diligently and as expeditiously as possible in the circumstances;
- (h) Any portions of the Facilities or of the Lands adjoining the site of the Further Work shall be restored to the same condition as existed prior to the commencement of such Further Work or as close thereto as reasonably possible; and
- (i) Any dispute arising out of the interpretation or application of this section 7.12 shall be determined by arbitration pursuant to Article 17.0 hereof.

8.0 UTILITIES AND OPERATING COSTS

8.1. For purposes of this Agreement, the Operating Costs of the Shared Facilities (the “**Shared Facilities Operating Costs**”) means all costs properly attributable, in accordance with generally acceptable accounting practice, to the maintenance and operation of the Shared Facilities, including amounts paid or incurred by the Boards or the Municipality for:

- (a) standard all risk property insurance for the Shared Facilities;
- (b) third party general liability insurance for the Shared Facilities;
- (c) maintenance of Shared Facilities;
- (d) lighting, fire alarms and annunciation, loudspeakers, public address and music broadcasting system for the Shared Facilities;
- (e) repairs and replacements to and maintenance and operation of the Shared Facilities, not included under section 7.1 hereof;

- (f) all utilities and similar services to the Shared Facilities, which are not separately metered and billed to each Party;
- (g) other similar costs exclusive of real property taxes and assessments of a capital nature; and
- (h) such other items as the Parties may agree in writing.

8.2. All charges for Shared Facilities Operating Costs shall be allocated between the Parties in accordance with their Proportionate Share, and each Party shall be responsible to pay its Proportionate Share of such Shared Facilities Operating Costs as so determined.

9.0 DETERMINATION AND PAYMENT OF RESPECTIVE COSTS

9.1. Before the commencement of each fiscal period adopted by the Municipality and the Boards for their accounts in respect of the Facilities or as soon thereafter as is reasonably possible, each Party shall furnish to the other an estimate of the Shared Facilities Operating Costs, and the costs of maintenance, repairs and reconstruction of the Shared Facilities for the fiscal period (the "**Shared Facility Costs**") and the amount payable by each to the other pursuant to this section. The amounts owing by each to the other shall be set off and the Party thereafter owing any amount to the other as estimated, shall pay such amount in equal monthly installments on the first day of each month throughout the fiscal period.

9.2. Each Party shall maintain in accordance with generally accepted accounting principles the books, records and accounts required to accurately reflect their respective Operating Costs in respect of the Shared Facilities and each Party shall have the right upon reasonable notice to inspect such books and records of the other Party.

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9.3. Within sixty (60) days after the end of each six (6) month period, or such other period as may be agreed, each Party shall furnish to the other a statement of the actual amount of Shared Facility Costs during such fiscal period, and the share thereof payable by each pursuant to this Agreement showing in reasonable detail the information relevant and necessary to the exact calculation and determination of these amounts. If the share is different from the payments on account thereof made by each Party pursuant to this section 9.3, appropriate adjustments will be made between the Parties within thirty (30) days after the delivery of the statement. At any time that any Party determines that the relative proportion of any sharing of the Shared Facility Costs as set out in this Agreement may not be equitable, it may, by written notice to each of the other Parties, advise that it has determined that its share of the Shared Facility Costs has been materially inequitable to such Party. Following a receipt of such a notice, a report shall be completed by an appropriate expert, as approved by the Parties, to determine the appropriate share of the Shared Facility Costs to be paid by each Party. The Parties shall then adjust the share of Shared Facility Costs in accordance with the report so prepared. In the event that the shares of the Shared Facility Costs of the Parties have changed, the Parties shall forthwith make all monetary adjustments between themselves necessary to reflect such change.

10.0 INTEREST ON ARREARS

10.1. Each Party shall pay to the other interest on amounts owing to the other pursuant to the provisions of this Agreement and which are not in dispute, and are in arrears, at the rate which is 1.25% above that rate charged by the Royal Bank of Canada to its best customers (the "**Royal Bank of Canada Prime Rate**") per annum calculated monthly, from the date when the same became due, until paid. If any Party at any time before, during or after the term of this Agreement determines that another Party has not paid any amount that the other Party should have paid under this Agreement, such Party shall pay such amount to the Party owed same, on demand and this

obligation shall survive the expiration or earlier termination of this Agreement, as the case may be. In any action or proceeding or proposed proceeding or action, which a Party may be required to pursue to enforce its rights hereunder, the Party owing the amount in question agrees to pay all costs incurred by the Party owed such amount, in enforcing payment, including reasonable solicitor's fees.

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

11.0 RIGHT OF PERFORMANCE

11.1. If a Party shall fail to perform any of its covenants or obligations under this Agreement, either of the other Parties may, from time to time and in its discretion, perform or procure performance of any such obligations following fourteen (14) business days from having given notice to both other parties, of the alleged breach or default, and for such purposes, may enter upon the Shared Facilities and carry out such work upon the Shared Facilities that it may consider requisite or necessary, and shall be reimbursed for its costs on the basis set forth in Article 9.0. Provided that, if a Party reasonably determines that the delay necessary to provide the aforementioned notice may cause additional damage or create a situation of danger, such Party may enter without notice, provided that such Party gives notice to the other Parties of such entry as soon as reasonable under the circumstances.

12.0 JOINT USE COMMITTEE

12.1. In order to facilitate the administration of the joint use of the Facilities by the Boards and the Municipality, a committee consisting of two (2) members appointed by the Thames Valley Board, two (2) members appointed by the Catholic Board and two (2) members appointed by the

Municipality shall be established and maintained during the currency of this Agreement and shall be responsible for the following:

- (a) conduct at least one (1) meeting every six (6) months;
- (b) conduct an annual review of the provisions of this Agreement
- (c) review cost sharing of the repair and replacement of the equipment and supplies:
- (d) review the hours of use and any amendments proposed; and
- (e) review and consider approval of any further uses proposed by either party
- (f) resolve any conflicts in the scheduling of use of the Joint Facilities and Shared Facilities.

13.0 EMERGENCY PROCEDURES, STRIKES AND INCLEMENT WEATHER

13.1. The Joint Use Committee and the Parties shall co-operate to establish a form of emergency procedures and drills for the entire Facilities including, without limitation fire drills and other safety measures.

13.2. In the event of any strike, lockout or any other labour disturbance affecting one or more of the parties hereto, the parties shall cooperate one with the other ~~to minimize the effect thereof on~~ the use of the Facilities and/or Lands (in the manner contemplated hereunder), by the parties who are not directly subject to such strike, lockout or other labour disturbance.

Deleted: so as to

13.3. The parties recognize and agree that certain of them may decide not to conduct normal operations within those areas of the Facilities and/or Lands which they are entitled to use due to inclement weather. During periods of inclement weather, each party shall monitor the website of the

other parties to determine whether a decision has been made not to conduct normal operations. The parties shall cooperate and otherwise act reasonably in connection with the decision of one or more parties not to conduct normal operations within any part of the Facilities due to inclement weather.

14.0 INSURANCE

14.1. Municipality's Insurance: Throughout the term of this Agreement, the Municipality shall obtain and maintain the insurance shown below:

- (a) Third party general liability insurance covering all use and occupation of the Joint Facilities and Shared Facilities, by the Municipality in an amount not less than Fifteen Million (\$15,000,000) dollars and shall include the Thames Valley Board and the Catholic Board as additional insureds with respect to the Municipality's operations and obligations under this Agreement;
- (b) The Municipality shall not do, omit to do, or permit to be done or omitted to be done in or on the Facilities and/or the Lands anything that may void coverage under or increase the costs of any insurance policies carried by the Boards;
- (c) The Municipality will provide each of the Boards with evidence of the insurance described in clause (a) above promptly upon request. Such certificate shall be delivered within 30 days of commencement of this Agreement and thereafter once annually on renewal of insurance coverage.

14.2. Boards' Insurance: Throughout the term of this Agreement, each of the Boards shall obtain and maintain the insurance shown below:

- (a) Third party general liability insurance covering all use and occupation of the Joint Facilities and Shared Facilities by the Thames Valley Board, the Catholic Board, and the Municipality, in an amount not less than Twenty Million (\$20,000,000) dollars and shall include the other Board, and the Municipality as an additional insured with respect to such Board's operations and obligations under this Agreement;
- (b) Neither the Thames Valley Board , nor the Catholic Board shall do, omit to do, or permit to be done or omitted to be done in or on Facilities and/or the Lands anything that may void coverage under or increase the premiums on the property insurance policies carried by the Municipality;
- (c) Each of the Boards will provide the Municipality with evidence of the insurance described in clauses (a) above promptly upon request. Such certificate shall be delivered within 30 days of commencement of this Agreement and thereafter once annually on renewal of insurance coverage.

14.3. The Parties acknowledge that each will carry all risks property and boiler insurance on the Facilities under their control and it is agreed that the insurance required is based on the intention of insuring the Property at all times in the type, form and amount which a prudent owner, acting reasonably, in the circumstances would consider appropriate, having regard to the cost and availability thereof.

14.4. The Parties agree that the type, form and amount of insurance shall be reviewed, and, if necessary, renegotiated not less than every five (5) years. If the Parties are unable to agree on the type, form and/or amount of such insurance in the context of any such review or renegotiation, the matter shall be determined pursuant to Article 17.0 hereof.

14.5. The Parties covenant and agree that, unless the Parties otherwise agree in writing, all insurance required by this Agreement shall be carried in favour of each of the Parties, as insureds, under each policy in accordance with their Proportionate Share.

15.0 MUTUAL INDEMNIFICATION

15.1. The Municipality shall indemnify and hold each of the Boards harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions of the Municipality, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, arising out of any cause whatsoever through its use and occupation of the Joint Facilities and/or Shared Facilities.

15.2. The Thames Valley Board shall indemnify and hold the Municipality and the Catholic Board harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions by the Thames Valley Board, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, arising out of any cause whatsoever through its operation and occupation of the Joint Facilities and/or Shared Facilities.

15.3. The Catholic Board shall indemnify and hold the Municipality and the Thames Valley Board harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions by the Catholic Board, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, arising out of any cause whatsoever through its operation and occupation of the Joint Facilities and/or Shared Facilities.

15.4. If as a result of the actions of any Party (the “**First Party**”), the other Parties (the “**Other Parties**”) shall be subject to any obligation or liability which was not required by this Agreement to be assumed by the Other Parties and which was not assumed by the Other Parties, the First Party shall indemnify and save harmless the Other Parties against such obligation or liabilities in their entirety.

16.0 COMPLIANCE WITH RULES

16.1. Each Party and its invitees shall observe and comply with all Laws and each Party covenants and agrees that it will not operate or use the Facility under its control or permit the Facility under its control to be operated or used for any unlawful purpose or any purpose which is not in compliance with or permitted under the requirements of all Laws or agreements. Without in any way limiting the generality of the foregoing to the extent that any parties' undertakings include the storage, preparation, handling and/or service of food, they shall comply with all requirements of Ontario Regulation 562 promulgated pursuant to the *Health Protection and Promotion Act* (Ontario), as the same may be amended, replaced or superseded.

16.2. The Joint Use Committee shall determine and administer rules governing the joint use and enjoyment of the Facilities, subject to and in compliance with the policies and procedures of the respective Boards and the Municipality, subject to final approval by the Boards and Municipality, where applicable. Such rules may prohibit the Municipality and/or the Boards and their respective invitees from using the Shared Facilities or the Joint Facilities, if such use may reasonably disrupt the use of the Schools, or if such use may reasonably disrupt the use of the Arena. The Parties and their respective invitees shall comply with such rules at all times. The Parties each shall take all reasonable to enforce such rules.

17.0 RESOLUTION OF DISPUTES

17.1. The parties agree to arbitrate any disagreement arising out of or relating to this Agreement, which is not satisfactorily resolved by the Joint Use Committee. All such disagreements shall be submitted to the arbitration of one person.

17.2. The provisions of this Article shall be deemed to constitute a "submission" within the meaning of the *Arbitration Act* and the provision of the *Arbitration Act*, except to the extent that a contrary intention is expressed herein, shall apply to any arbitration hereunder. Any Party may at any time give written notice to the others of its desire to submit such dispute to arbitration stating with reasonable particularity the subject matter of such dispute. Within five (5) business days after receipt of such notice, the Parties shall appoint a single arbitrator with appropriate experience to determine such dispute. If the Parties fail to appoint an arbitrator, each person may appoint one person to choose, together with any other person so chosen, one person to be the arbitrator. If no arbitrator is appointed in this manner, any Party may apply to a Judge of the Superior Court of Ontario to appoint an arbitrator to determine such dispute. The arbitrator so appointed (herein the "**Arbitrator**") shall forthwith proceed to arbitrate the dispute.

17.3. The costs of the arbitration shall be paid as determined by the Arbitrator. Notwithstanding anything to the contrary contained in the *Arbitration Act*, the award of the Arbitrator shall be final and binding upon the Parties and all persons claiming through or under them but may be subject to review or appeal in any court of law or equity. An award of the Arbitrator is a condition precedent to the right of any Party or any person claiming through or under them but may be subject to review or appeal in any court of law or equity. An award of the Arbitrator is a condition precedent to the right of any Party or any person claiming through or under a Party to bring any suit, action or other proceeding in any court of law or equity against any Party or any person claiming through or under a Party or against the Arbitrator in respect of any matter for which arbitration is herein provided.

Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction and thereupon execution or other legal process may issue thereon. The Parties hereto and all persons claiming through or under them hereby attorn to the jurisdiction of the Arbitrator and to the jurisdiction of any court in which the judgment may be entered. Arbitration may not be waived except upon delivery by the party of a written notice to that effect.

18.0 PRE-EMPTIVE RIGHTS

18.1. Each Party covenants with the other Parties, that if, during the Term granted, any Party (the "Offeror") desires to sell or otherwise dispose of any interest held by it in the Lands or any part thereof to any non-associated party, firm or corporation, it shall first offer by notice in writing to the other Parties, to sell the Land to the other Parties for the amount which is equal to the fair market value of the Lands (the "**Land Market Value**") in accordance with their then existing ownership share of the Lands. The other Parties shall have a further ten (10) days to provide notice to the Offeror that they wish to have Land Market Value determined. If the Offeror receives any notice that any Party wishes to have the Land Market Value determined, the Offeror shall thereupon obtain two appraisals of the fair market value and shall use the average of the lowest two values so determined to obtain the Land Market Value and shall provide such Land Market Value to any Party requesting such Land Market Value, within ten (10) days of receipt of such Land Market Value. Each of the Parties which provided notice that they wished to have the land Market Value determined shall have a further twenty (20) days to provide notice to the Offeror that they wish to purchase such interest. If both of the other Parties provide such notice, they shall purchase the interest of the Offeror in the Lands in the same proportions in which they currently hold interest in the Lands. If only one Party gives notice, it shall purchase all of the interest of the Offeror in the Lands. If no Party has within ten (10) days from receipt of such notice, indicated that it desires to have the Land Market Value determined, then the Offeror may enter into an agreement of purchase

and sale with any other party, provided that such party agrees prior to such transaction to be bound by this Agreement and to become a party hereto in place of the Offeror, with respect to the Lands. If no Party delivers notice that it wishes to so purchase the Lands, then the Offeror may sell the Lands to any other party within four months after the expiry of the twenty (20) business day period for a price not less than the Land Market Value, provided that the person to whom the Lands are to be sold agrees prior to such transaction to be bound by this Agreement, subject to the provisions of section 4.1 hereof, and to become a party hereto in place of the Offeror, with respect to the Lands. If the Lands are not sold within such four (4) month period on such terms, the rights of the other Parties pursuant to this paragraph shall again take effect and so on from time to time.

19.0 GENERAL

19.1. This Agreement and the privileges contained herein shall not be assigned by any Party without the consent in writing of the other Parties, which consent may not be unreasonably withheld.

19.2. No amendment, changed or modification to this Agreement shall be valid unless authorized in writing by all of the Parties hereto.

19.3. Any notice to the Parties hereto (herein a “**Communication**”) may be delivered personally or sent by prepaid or registered mail or by email or facsimile transmission as follows;

to the Thames Valley Board as follows:

The Thames Valley Board of Education
1250 Dundas Street
London, Ontario
N5W 5P2
Attention: Business Services Officer

to the Catholic Board as follows:

Deleted: Box 5888

Deleted: 6A 5L1

The London District Catholic School Board
P.O. Box 5474
5200 Wellington Road South
London, Ontario
N6A 4X5
Attention: Superintendent of Business

to the Municipality as follows:

The Municipality of Strathroy-Caradoc
52 Frank Street
Strathroy, Ontario
N7G 2R4
Attention: Clerk

or such other address or individual as may be designated by notice by any Party to the other. Any Communication given by personal delivery or email or facsimile transmission shall be conclusively deemed to have been given on the day of actual delivery thereof if given prior to 4:30pm on a Business Day, and if given after 4:30 pm or not on a Business Day, on the next Business Day, and, if given by registered mail, on the second Business Day following the deposit thereof in the mail. If the Party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery facsimile or email transmission.

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

- (a) considering any requests for its consent, approval or other form of authorization required to be given or granted by it hereunder; and
- (b) making any decision or taking any action with respect to the matter concerning the Facilities from time to time.

19.5. This Agreement replaces and supercedes the Prior Joint Use Agreement.

19.6. The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done, all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.

19.7. It is understood and agreed that this Agreement is subject to the provisions of The Planning Act, R.S.O. 1990, as amended, and particularly Section 59 thereof being complied with.

19.8. It is intended that all provisions of this Agreement shall be fully binding and effective between the Parties, but in the event that any particular provision or provisions or any part of one is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or provisions of part of the provision shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force and effect.

19.9. Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement and are not to be used as an aid in the interpretation of this Agreement.

19.10. This Agreement is to be read with all changes in gender or number as required by the context.

19.11. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

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

19.13. Subject to the restrictions on transfer and assignment, provisions of this Agreement are intended to and shall run with the respective interests of the Lands and Facilities acquired by each

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of the Parties hereto from time to time and the provisions of this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

19.14. In this Agreement time shall in all respects be of the essence.

[Signing page follows]

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IN WITNESS WHEREOF the Parties have hereunto affixed their respective corporate seals attested by the hands of their respective officers duly authorized in that behalf.

THAMES VALLEY DISTRICT SCHOOL BOARD

Per: _____
Name:
Title:

Per: _____
Name:
Title:

ENGLISH LANGUAGE SEPARATE DISTRICT SCHOOL BOARD NO. 38, OPERATING AS THE LONDON DISTRICT CATHOLIC SCHOOL BOARD

Per: _____
Name:
Title:

Per: _____
Name:
Title:

THE MUNICIPALITY OF STRATHROY-CARADOC

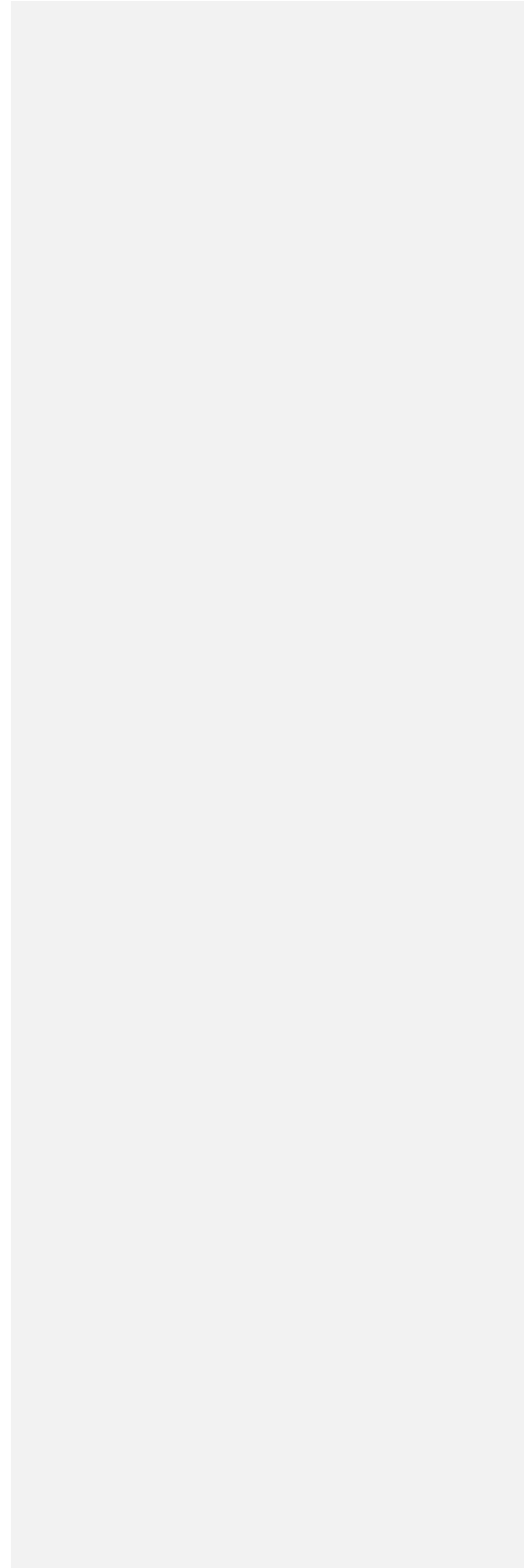
Per: _____
Name:
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Per: _____
Name:
Title:

SCHEDULE A

PART OF LOT 25, CONCESSION 2, SOUTH OF THE EGREMONT ROAD, MORE PARTICULARLY DESIGNATED AS PARTS 1 AND 2 ON REFERENCE PLAN 33R-14372 SAVE AND EXCEPT PARTS 1 AND 2 ON 33R-15143 AND KNOWN AS PIN 09616-0246, TOWNSHIP OF STRATHROY-CARADOC, NOW KNOWN AS STRATHROY.

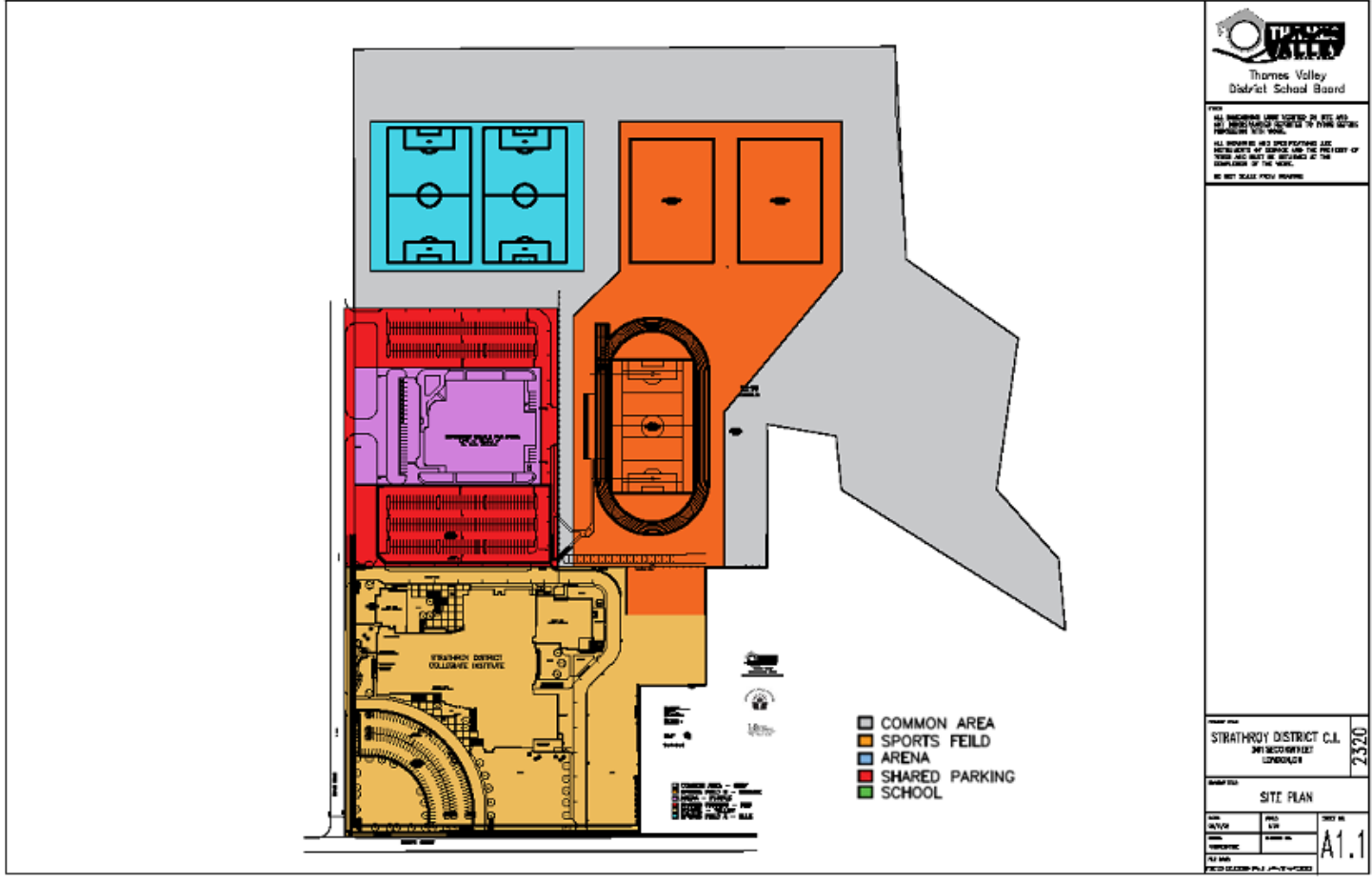
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SCHEDULE B

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Thames Valley
District School Board

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 SPECIFIED.

STRATHROY DISTRICT C.I.
 3415 BUCKINGHAM STREET
 LONDON, ONT.

2320

SITE PLAN

DRAWN BY: [Blank]
 CHECKED BY: [Blank]
 DATE: [Blank]
 SCALE: [Blank]
 PROJECT NO.: [Blank]

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SCHEDULE C

DRAFT

