

## Request for Decision

### Sudbury Indoor Tennis Centre Request for Tax Relief

Presented To: Finance and  
Administration  
Committee

Presented: Tuesday, Jun 04, 2019

Report Date Monday, May 13, 2019

Type: Managers' Reports

#### Resolution

THAT the City of Greater Sudbury upholds the terms of the lease agreement, not to provide tax relief, as outlined in the report titled "Sudbury Indoor Tennis Centre Request for Tax Relief" from the Interim General Manager of Community Development, presented at the Finance and Administration Committee meeting on June 4, 2019.

#### Relationship to the Strategic Plan / Health Impact Assessment

This report aligns with Council's Strategic Plan in the area of Quality of Life and Place.

#### Report Summary

This report outlines a request from the Sudbury Indoor Tennis Centre for tax relief. The report provides options for consideration for tax relief.

#### Financial Implications

If the resolution is approved, there is no financial impact.

If Alternative 2 is approved, the City will provide a grant equivalent to the 2016, 2017 and 2018 property taxes owing of \$48,181.49, in order to provide assistance for the Sudbury Indoor Tennis Centre to pay its property tax obligation.

#### Signed By

**Report Prepared By**

Jeff Pafford  
Director of Leisure Services  
*Digitally Signed May 13, 19*

**Division Review**

Jeff Pafford  
Director of Leisure Services  
*Digitally Signed May 13, 19*

**Financial Implications**

Jim Lister  
Manager of Financial Planning and  
Budgeting  
*Digitally Signed May 14, 19*

**Recommended by the Department**

Ian Wood  
Interim General Manager of Community  
Development  
*Digitally Signed May 17, 19*

**Recommended by the C.A.O.**

Ed Archer  
Chief Administrative Officer  
*Digitally Signed May 22, 19*

## Introduction

The Sudbury Indoor Tennis Centre (SITC) is a tenant on the municipally owned property located at Queen's Athletic Field. The Municipal Property Assessment Corporation (MPAC) assessed the facility for the first time in 2017. MPAC determined that SITC's facility is taxable, which resulted in taxes owing. The Sudbury Indoor Tennis Centre has contacted the City of Greater Sudbury (City) requesting tax relief; specifically requesting the facility be declared a municipal capital asset.

## Background

The Sudbury Winter Tennis Club also known as the Sudbury Indoor Tennis Centre is a tenant on the municipally owned property located at 0 Cypress Street, Sudbury, which is utilized by the City as a public park and recreation area commonly known as Queen's Athletic Field. This property also includes a sports field, an outdoor track (summer), skating oval (winter), outdoor tennis courts, a parking lot, a field house with dressing rooms and common space. This field house is shared with the tenant (SITC).

In 1992 the City of Sudbury authorized a lease agreement with the Sudbury Winter Tennis Club by the passing of by-law 92-185. The lease was for 10 seasons, commencing winter season 1992 and ending June 1st, 2002. The lease to the Sudbury Winter Tennis Club was for use of the part of the City's land (to erect the tennis bubble) and use of part of the Queen's Athletic field house. As per the lease, there was no rent payable and the club was to be responsible for property taxes, if assessed, as per paragraph 17 of the Lease. A copy of By-law 92-185 and the lease are attached (Appendix A - By-law 92-185 - Lease Agreement). The lease agreement was in overholding between 2002 and 2012.

In 2012, the City of Greater Sudbury entered into a new lease agreement with the Sudbury Winter Tennis Club for a 10-year term (January 2, 2012 - December 31, 2021). The lease was executed under delegated authority as per the City's Property By-Law, with no rent payable by the club. The club is responsible for property taxes, if assessed, as per paragraph 4 of the lease agreement. An executed copy of the 2012 lease is attached (Appendix B - Sudbury Winter Tennis Club Lease Agreement, January 1, 2012).

In the fall of 2017, staff advised the Sudbury Indoor Tennis Centre that the facility was assessed by MPAC resulting in taxes owing back to 2016. Formal correspondence was sent to the Sudbury Indoor Tennis Centre regarding the MPAC assessment on January 18, 2018. Taxes owing at this point were as follows:

- 2016 taxes owing - \$15,675.99
- 2017 taxes owing - \$18,060.76
- Total owing - \$33,736.75

In March of 2018, the City sent correspondence to the Sudbury Indoor Tennis Centre outlining repayment options with respect to taxes owing. The Sudbury Indoor Tennis

Centre passed the following resolution at an emergency board meeting held March 21, 2018:

*That the Board send a letter to the City of Greater Sudbury, advising the City that as a small, not-for-profit recreational club which has operated in a City owned building and on City owned tennis courts for twenty-five years, without previously having been subject to property taxes, the Club cannot afford to pay either the retroactive tax amount of \$33,736.35 or future annual taxes anticipated to be between \$18,000-\$20,000 and that the Board formally asks City Council to present a motion, to deem the Sudbury Indoor Tennis Centre a property of municipal significance, similar to what was done for the Northern Water Sports Centre which found itself in circumstances very similar to those of the Sudbury Indoor Tennis Centre. The Board regrets to have to advise the City that should the Club not be so deemed, the Club will be forced to close as it will no longer be financially viable.*

In the spring of 2018, a Request for Reconsideration was submitted by the City appealing MPAC's assessment of the property tax as it pertains to the Sudbury Indoor Tennis Centre. The Request for Reconsideration was successful and the taxable component of the property assessment was reduced by \$112,100.

## Current Status

As of March 2019 the Sudbury Indoor Tennis Centre has been billed \$54,968.94 for property taxes owing, including interest.

Sudbury Indoor Tennis Centre Property Taxes Owing	
2016 property taxes owing	\$15,675.99
2017 property taxes owing	\$18,060.76
2018 property taxes owing	\$17,703.72
2018 property tax adjustment (as per RFR)	(\$4,049.35)
2019 interim tax bill	\$6,787.45
Interest accrued	\$790.37
<b>Total</b>	<b>\$54,968.94</b>

As of the date of this report the Sudbury Indoor Tennis Centre has not met its obligation and has not paid any of the property taxes billed.

The Sudbury Indoor Tennis Centre has also advised that the HVAC system for the air supported structure requires replacement in the near term estimated at \$175,000. The

HVAC system is a capital responsibility of the Sudbury Indoor Tennis Centre. A recent application for Trillium funding for HVAC upgrades was unsuccessful.

Financial statements provided to the City by the Sudbury Indoor Tennis Centre show a total of \$181,951 in revenue and \$182,051 in expenses for the year ending June 30, 2017. Revenue totals include \$99,058 collected in court fees and \$33,051 collected from membership fees.

The City has met with Sudbury Indoor Tennis Centre representatives on strategies to improve their financial position. An initial meeting was held in April 2018 to learn more about the group's challenges and financial position. Subsequent meetings were held to discuss programming opportunities and marketing strategies. As a result of meetings the City is exploring opportunities for promotion of the indoor tennis centre and the Club is exploring joint programming opportunities. As part of discussions, there has been a commitment by the Club to provide access and programming to those individuals with financial barriers, which was identified as part of the City's Affordable Access to Recreation Strategy.

## Demand and Participation Analysis

In order to gain a better understanding of demand and provision levels staff reached out to the JF Group to obtain information with respect to demand for an indoor tennis centre for a municipality the size of the City of Greater Sudbury. The JF Group has worked with other municipalities and Tennis Canada to develop facility and tennis strategies.

The JF Group suggests that a community the size of the City of Greater Sudbury should be able to support two or three indoor tennis complexes (with 6 courts each).

To determine the number of indoor tennis players in a community, the following formula is used:

- # of casual players (those playing tennis 4 times per year) is equal to 20% of the adult population
- # of court players (those playing tennis 2 times per month) is equal to 40% of casual players
- # of indoor tennis players is equal to 11% of court players

Projected Number of Indoor Tennis Players in Greater Sudbury	
# of adults in Greater Sudbury (2016 Census)	97,595
# of casual players (20% of adult population)	19,519
# of court players (40% of casual players)	7,808
<b># of indoor players (11% of court players)</b>	<b>859</b>

<b># of Sudbury Indoor Tennis Centre members</b>	<b>212</b>
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The JF Group also advised that to be successful, an indoor tennis facility requires a minimum of 75 to 100 members per court. With four indoor tennis courts, the Sudbury Indoor Tennis Centre should have between 300 and 400 members (currently has 212 members).

The analysis demonstrates that there is sufficient supply in Greater Sudbury to support the indoor tennis centre. There appears to be opportunities to capture latent demand and increase membership.

## Comparator Facilities

Information on membership fees and court fees from similar facilities across Ontario has also been collected. Information has been collected from the following:

- Barrie (Barrie North Winter Tennis Centre)
- Burlington (Aldershot Tennis Club)
- Ottawa (Tennis Centre West Ottawa)
- Kitchener (GSM Tennis Club)

<b>Indoor Tennis Centre Membership Fees Comparison (Annual Rates)</b>			
<b>Location</b>	<b>Adult</b>	<b>Student</b>	<b>Family</b>
Barrie	\$329	\$239	\$799
Burlington	\$535	\$375	n/a
Ottawa	\$624	\$349	\$1235
Kitchener	\$350	\$250	\$700
<b>Sudbury</b>	<b>\$265</b>	<b>\$150</b>	<b>\$650</b>

<b>Indoor Tennis Centre Court Fees (Hourly Rates)</b>		
<b>Location</b>	<b>Members</b>	<b>Non-Members</b>
Barrie	\$26 prime \$22 non-prime	\$50 prime \$42 non-prime
Burlington	\$15	Members permitted to sign in a guest 5 times per year.
Ottawa	\$36 prime \$28 non-prime	\$51 prime \$43 non-prime
Kitchener	\$20 prime \$15 non-prime	\$35 prime \$25 non-prime
<b>Sudbury</b>	<b>\$28</b>	<b>\$56</b>

Analysis demonstrates that membership rates in Sudbury are significantly less than other comparator facilities, while court fees are in the same range as other indoor tennis centers in Ontario.

## **Alternatives for Council's Consideration**

The following alternatives are available to Council in response to the Sudbury Indoor Tennis Centre's request for tax relief:

### Alternative 1

Council may deny the request for assistance from the Sudbury Indoor Tennis Centre and uphold the terms of the Lease Agreement signed by the group on January 1, 2012. Should Council choose this option, the Finance Division will continue its collection efforts, via its Accounts Receivable Section.

This option could create a negative impact on the Sudbury Indoor Tennis Centre, potentially causing closure due to the amount of funds currently outstanding.

### Alternative 2

City Council may consider granting an amount equal to property tax amounts for 2016, 2017, and 2018. Property taxes would begin to be charged in full for the year 2019 and forward. This option would allow staff to continue to work with the Sudbury Indoor Tennis Centre on their business plan with the aim of increasing membership and becoming more financially sustainable. An increase of approximately \$65 per member would be sufficient to provide for payment of the annual property taxes.

### Alternative 3

Council may consider providing a grant or partial grant to the Sudbury Indoor Tennis Centre, equivalent to or partially equivalent to the property tax liability generated by its occupation of the facility. City Council's authority to provide grants can be found in Section 107 of the Municipal Act. However, this action may encourage other groups occupying similar facilities to approach Council in an effort to be treated in the same fashion. The annual property taxes are estimated to be approximately \$14,000. This alternative is not recommended as it would set precedent for other similar organizations.

### Alternative 4

Properties owned and occupied by a municipality are exempt from taxation pursuant to Section 3 of the Assessment Act. However, where a municipality leases property to an organization or group, the property becomes taxable. If such a tenanted property is designated as a Municipal Capital Facility, the property becomes exempt from taxation. City Council may, by way of a by-law, designate the Sudbury Indoor Tennis Centre as authorized under Section 110 of the Municipal Act. Should Council choose this option, the Sudbury Indoor Tennis Centre would be exempt from taxation and the lost revenue would be passed on to all other property owners in the City.

Declaring the facility, a municipal capital asset is not recommended. Although the Sudbury Indoor Tennis Centre has requested to be treated like the Northern Water Sports Centre, the Northern Water Sports Centre is a shared use facility, with the City and tenant each using and programming space. This option also has the greatest negative impact on the tax levy.

## **Summary**

Of the four alternatives, staff recommend that only the first or second alternative should be considered by the Committee.

Should Council want to provide assistance to the Sudbury Indoor Tennis Centre, the recommended option would be to grant an amount equal to property tax amounts for 2016, 2017, and 2018. This option would provide some financial relief for the Sudbury Indoor Tennis Centre while allowing the opportunity to increase membership and gain financial sustainability. This option still provides support to the Sudbury Indoor Tennis Centre and an incentive for the group to move forward without creating an ongoing obligation for the City. If this option is accepted, the City will provide a grant of \$48,181.49 to allow for payment of the property tax obligation. If this alternative is approved, the recommended funding source would be the Tax Rate Stabilization Reserve.

Should Council choose to uphold the terms of the lease agreement with the Sudbury Indoor Tennis Centre, the request for assistance would be denied.

The City will work with the Sudbury Indoor Tennis Centre to explore potential grant opportunities for the capital funding required to replace the aging HVAC system.

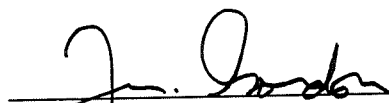
## BY-LAW 92-185

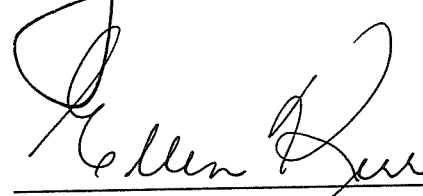
BEING A BY-LAW OF THE CORPORATION OF THE CITY OF  
SUDBURY TO AUTHORIZE THE MAYOR AND CLERK TO EXECUTE  
AN AGREEMENT TO LEASE PART OF THE ALDER STREET  
TENNIS COMPLEX AND PART OF THE QUEEN'S ATHLETIC  
FIELDHOUSE IN THE CITY OF SUDBURY BETWEEN THE  
CORPORATION OF THE CITY OF SUDBURY AND DONALD PETER  
KUYEK, IN TRUST FOR A COMPANY TO BE INCORPORATED AS  
THE SUDBURY WINTER TENNIS CLUB

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 to Lease between The Corporation of  
the City of Sudbury and Donald Peter Kuyek, In Trust for a company to  
be incorporated as The Sudbury Winter Tennis Club 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 TWENTY-SECOND DAY OF SEPTEMBER, 1992.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk



SCHEDULE "A"

**THIS AGREEMENT** made in triplicate this      day of September, 1992.

**B E T W E E N:**

**THE CORPORATION OF THE CITY OF SUDBURY**  
**(Hereinafter called the "City")**

**OF THE FIRST PART;**

**- and -**

**DONALD PETER KUYEK**, In Trust for a company  
to be incorporated in the name of Sudbury  
Winter Tennis Club, of the City of Sudbury,  
in the Regional Municipality of Sudbury  
**(Hereinafter called the "CLUB")**

**OF THE SECOND PART;**

**WHEREAS** the City is the owner of lands on which is  
currently situated the Alder Street Tennis Complex, in the City of  
Sudbury, being the tennis court facilities shown on Schedule "A"  
attached hereto;

**AND WHEREAS** the Club desires to lease, erect, operate,  
maintain and repair an air-support structure for the tennis court  
facilities during the winter season upon the said premises, known  
as part of the Alder Street Tennis Complex (hereinafter referred  
to as the "Alder Street Complex");

**AND WHEREAS** certain improvements are required to  
facilitate the erection of the air-support structure;

**AND WHEREAS** the Club desires also to lease a portion of  
the Queen's Athletic Fieldhouse as shown on Schedule "B" attached  
hereto, which Schedule forms a part hereof (hereinafter referred  
to as the "Fieldhouse");

THIS IS SCHEDULE "A" TO BY-LAW 92-185 OF THE CORPORATION OF THE CITY OF SUDBURY

Per:  Mayor

Per:  Clerk

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**AND WHEREAS** the City is agreeable to the improvements to be made to the tennis court facilities, subject to the Club being responsible for the total cost, subject to the approval of the City's Director of Parks and Recreation, and complying with the terms of this Agreement;

**AND WHEREAS** the Council of The Corporation of The City of Sudbury may pass by-laws for exercising all or any of the powers that are conferred on Boards of park management by Sub-section 1 of Section 11 of The Public Parks Act, R.S.O. 1990, C.P. 46, where lands are not under the general management, regulation and control of a Board of park management pursuant to paragraph 52 of Section 207 of The Municipal Act, R.S.O. 1990, c.M.45;

**NOW THEREFORE**, for good and valuable consideration and the sum of TWO DOLLARS (\$2.00) paid by the Club to the City, the parties hereto covenant and agree as follows:

1. Subject to paragraph 3, the City agrees to carry out improvements to the Alder Street Complex to permit the installation of an air-support structure for the tennis court facilities shown on Schedule "A" attached hereto, which Schedule forms a part hereof, provided the total cost of the improvements to construct a fifth tennis court, to upgrade the parking area and to add a new play structure, does not exceed \$88,000.00.

2. The Club agrees that the City is to exercise complete control over the construction of any improvements including the issuance of any purchase orders or the calling or awarding of any tenders for the improvements mentioned in paragraph 1 hereof.

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3. (a) With the return of this Agreement and the Agreement for the loan properly executed and secured by the Club, the City, upon approval by its City Council, will provide a grant by way of loan to the Club in the amount of \$50,000.00 which will be used to pay for the improvements and installation of the air-support structure. The Club agrees to repay to the City the sum of \$50,000.00, with interest at 7% per annum, calculated half (1/2) yearly, not in advance in blended monthly payments of principal and interest in the amount of \$577.97 on the 1st day of each month, in each and every year from and including the first day of November, 1992 to and including the first day of October 2002, together with the right when not in default to prepay at any time or times the whole or any part of the principal balance outstanding without notice or bonus.

(b) The Club shall provide annual financial statements prepared by an accredited accountant each year while the loan is outstanding in accordance with the direction of and to the reasonable satisfaction of the City's Commissioner of Finance and Administration.

4. The Club shall be responsible for the preparation and the cost of all plans, drawings and other documents required by the City for approval of the improvements by the City's Commissioner of Physical Services. Further, the Club is responsible for the cost of any necessary approvals or permits including the charges for a building permit, if required.

5. (a) The City consents to allowing the Club to carry out improvements to the Alder Street Complex to prepare for the erection of the air-support structure and to undertake some minor

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improvements to the Queen's Athletic Fieldhouse. It is understood and agreed that any such improvements are subject to the written approval in advance of the City's Director of Parks and Recreation.

(b) The City consents to the Club erecting, operating, maintaining and repairing the air-support structure over the tennis court facilities as shown on Schedule "A" attached hereto, for ten winter seasons, commencing with the winter season 1992 and ending the 1st day of June, 2002. The Club agrees that the air-support structure is to be maintained in a safe condition.

6. (a) The Club agrees that the air-support structure shall be erected at its own cost and expense not earlier than the first day of September of each winter season and removed by the Club, at its own cost and expense, no later than June 1st of each year for the term of this Agreement.

(b) The City hereby agrees that the air-support structure may be stored on the said premises in a secured location approved by the City's Director of Parks & Recreation.

7. The Club agrees that the air-support structure is to be erected, operated, maintained in a safe condition, repaired and removed at the Club's sole cost and expense and the Club agrees to indemnify and save harmless, release and forever discharge the City, its officers, employees and servants of and from all claims, causes of action, actions, demands, losses, damages, suits, costs and interest of any nature whatsoever, inclusive of claims under the Construction Lien Act that may result from the erecting, operating, maintaining, repairing or removal of the air-support structure.

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8. The City agrees that the Club has the use of the tennis court facilities set out on Schedule "A" attached hereto and a portion of the Queen's Athletic Fieldhouse as identified on Schedule "B" attached hereto during the winter season from June 1st to September 1st, subject to compliance with the other terms and conditions set out in this Agreement and subject to compliance with The City of Sudbury Municipal Code, chapter 594 being the Parks-Maintenance-Operation-Management-Regulations By-law and hereby acknowledges having received a copy thereof, except the hours of operation may be amended from time to time by the City's Director of Parks & Recreation.

9. The Club agrees to pay for all services supplied to and from the tennis court facilities and the air-support structure and for those portions of the Fieldhouse exclusively utilized by the Club, inclusive of hydro and water for the period September 1st to June 1st. Further, the Club shall pay for all costs and charges associated with the maintenance and repair of these services caused by or arising out of any act, deed, omission or an act of the Club, its members, guests, invitees or licencees, reasonable wear and tear and damage by fire, lightning and tempest excepted.

10. (a) The Club covenants and agrees to maintain, repair and pay for all costs and charges for the maintenance and repair of the tennis court facilities installed by the Club or damaged by the Club, its members, guests, invitees or licencees during the months of the Club's occupation of the premises and the air-support structure. The Club shall maintain and repair these areas in accordance with City standards or in accordance with any

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requirements or directions of the City's Director of Parks and Recreation. Reasonable wear and tear and damage by fire, lightning and tempest shall be excepted from maintenance and repair at all times.

(b) Prior to any maintenance, improvement or repair, the Club shall submit in writing to the City's Director of Parks and Recreation the proposed work, method of financing, and any other information requested by the City's Director of Parks and Recreation. No work shall proceed without the written approval in advance of the City's Director of Parks and Recreation. The Club shall be responsible for preparing all necessary plans and obtaining all necessary permits prior to the work commencing, once approved.

(c) The Club shall not construct, erect or place or make any changes or additions to the said tennis court facilities, the Queen's Athletic Fieldhouse or the air-support structure or part thereof except in compliance with this Agreement.

11. All right, title, interest, trust and property of the improvements shall be and vest with the City subject to those rights set out in this Agreement.

12. The Club agrees that its membership fees are not to be unreasonably high and such membership fees or change in membership fees shall be filed with the City's Department of Parks and Recreation, it being understood that such fees shall be sufficient to permit the Club to meet its financial obligations in a prudent manner.

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13. The Club agrees that the said tennis facilities will always be available to non-members of the Club at times to be determined by the City's Director of Parks and Recreation and at reasonable rates, it being understood that such use and rates will not prevent the Club from meeting its financial obligations in a prudent manner or adversely affect the operation of the Club.

14. It is understood and agreed by the Club that any chattels or other real or personal property which the Club has or permits at the tennis court facilities, the fieldhouse and the air-support structure shall be the responsibility of the Club which agrees to release, indemnify and save harmless the City from any claim, loss, damage, theft or robbery of any chattels or other real or personal property located thereon or therein.

15. The Club agrees to indemnify and save harmless the City from all damages for any injury or death sustained by any person or persons and damage to any real or personal property, including all consequential losses, caused by or arising out of any act, deed, omission or act of the Club, its members, guests, invitees, or licencees and to indemnify and save harmless the City from and against all losses, claims, suits, actions, demands, damages, liabilities, judgments or costs which may in any way accrue against the City for or on account of any act or deed or any omission or act of the Club, its members guests, invitees, or licencees arising out of the use of the tennis court facilities, the fieldhouse or the air-support structure.

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16. During the term of this Agreement, the Club agrees to maintain during the term hereby created, including any and all subsequent extensions and renewals thereof, comprehensive liability insurance, including tenants' legal liability, in the following manner and amount:

(i) Comprehensive liability insurance which shall include contractual liability coverage for liability assumed hereunder including claims of the Club and protective coverage for all subcontracted operations with such insurance to provide limits of at least:

Bodily Injury Liability and property damage liability inclusive	Each Occurrence or accident \$2,000,000.00	Aggregate each policy year \$2,000,000.00
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(ii) The Club shall furnish the City with a certified copy of the comprehensive liability insurance policy or policies together with an Undertaking from the insurance company that such insurance will not be cancelled or reduced in coverage without thirty (30) days' prior written notice by prepaid registered post addressed to The Corporation of The City of Sudbury at Bag 5000, Station "A", Sudbury, Ontario, P3E 4S5, Attention: Manager of Administration and Deputy City Clerk. Should the City be of the opinion that the insurance taken out by the Club is inadequate in any respect for any reason whatsoever, it shall forthwith advise the Club of its reasons therefor and the Club shall forthwith take out additional insurance satisfactory to the City.



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17. The Club shall be responsible for the payment of all taxes whether federal, provincial or municipal, including any business or real property tax. In the event these taxes are required to be paid by the City, the Club shall immediately, upon being invoiced, reimburse the City for the taxes paid.

18. Where notice is required or permitted to be given by either party to the other pursuant to this Agreement, such notice shall be in writing and shall be deemed to have been sufficiently given,

(a) To the City, if delivered in person or sent by registered mail to the Director of Parks and Recreation, at the following address:

200 Brady Street  
Bag 5000, Station "A"  
Civic Square Complex  
SUDBURY, Ontario  
P3A 5P3

(b) To the Club, if delivered in person or sent by registered mail to the Club at the following address:

Sudbury Winter Tennis Club  
c/o Donald Peter Kuyek  
229 Elm Street  
SUDBURY, Ontario  
P3C 1T8

(c) If any question arises as to the date upon which notice was given by one party to the other, notice will be deemed to have been received, if it is delivered in person, on the day it is delivered, or if it is sent by registered mail, on the date it is received by the person to whom it is addressed or on the third business day after the day upon which it is mailed, whichever is the earliest.

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19. In case of non-payment of rent and in case any default, breach or non-observance be made or suffered by the Club at any time or times, in respect of any of the covenants, provisos, conditions, or reservations herein contained, which on the part of the Club ought to be observed or performed, then, and in every such case, provided reasonable steps have not been taken to cure the non-payment, default, breach or non-observance within fifteen (15) days of the date of notice in writing thereof from the City to the Club and signed on behalf of the City, the City may terminate this Agreement by giving to the Club fourteen (14) days notice during which time the Club is no longer permitted to cure such non-payment, default, breach or non-observance and in every such case, it shall be lawful for the City, its servants or agents to re-enter and thereafter to have, possess, and enjoy in full, the premises and the City may restore the lands to their former condition at the expense of the Club.

20. The public washrooms within the said fieldhouse and the parking facilities located on the said premises are to be utilized by the Club in common with all other members of the public and all other persons utilizing the facilities at the Alder Street Tennis Complex and The Queen's Athletic Complex.

21. Should the City staff be required to carry out maintenance, which is the responsibility of the Club to make temporary repairs or undertake work on the said premises, the Club agrees to reimburse the City for the actual costs of labour and material incurred by the City.

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22. The responsibility respecting the tennis court facilities improvements, the air-support structure and the portion of the Fieldhouse identified in Schedule "B", are those of the Club at all times specified in this Agreement, but the Club may let other persons use the tennis court facilities on a temporary and short term basis, as approved by the City's Director of Parks & Recreation.

23. All of the Club's activities to be conducted upon the said premises shall not interfere with but shall be co-ordinated with the City's Parks & Recreation Department's events and activities conducted upon the said premises, to the satisfaction of the City's Director of Parks & Recreation; such condition shall not be unreasonably exercised by the City.

24. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their executors, administrators, legal personal representatives, successors and assigns and shall not be assigned without the written consent of the City.

25. Notwithstanding anything in this Agreement contained, if the Club becomes bankrupt or insolvent or has a Receiving Order made against it or makes an assignment for the benefit of the Club's creditors, or, if an Order is made or resolution passed for the winding up of the Club or if the Club takes the benefit of any Statute for the time being in force relating to bankruptcy or insolvent debtors, then, and in every such case, the City shall be entitled, in addition to whatever rights are provided for in the relevant legislation, to terminate this Agreement as provided herein and to take whatever steps as are provided in such event.

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26. In the event that the Club defaults in any way upon its obligations of the lease for the air-support structure, it is hereby agreed that the City may assume the lease of the structure if it deems advisable to do so.

27. No condoning, excusing, overlooking or delay in acting upon by the City of any default, breach, or non-observance by the said Club at any time or times in respect of any covenant, proviso or condition in this Agreement shall operate as a waiver to the City's rights under this Agreement in respect of any such or continuing subsequent default, breach or non-observance and no waiver shall be inferred from or implied by anything done or omitted to be done by the City except an express waiver in writing.

28. All rights and remedies of the City set forth in this Agreement shall be cumulative and not alternative.

29. No payment by the Club or receipt by the City of a lesser amount than the monthly rent stipulated shall be deemed to be other than on account of the earliest stipulated rent and other payment, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment as rent or receipt be deemed an accord and satisfaction, and the City may accept such cheque or payment without prejudice to the City's right to recover the balance of such rent or pursue any other remedy in this Agreement provided.

30. The Club shall indemnify and hold the City harmless from and against any liability, claim, damages, or expenses (including legal expenses) due to or arising from any claim made against the

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said demised premises or any portion thereof for construction liens relating to work done by or on behalf of the Club and all work which the Club is obliged to do and such liability, claims, damages, or expenses incurred by the City shall be paid by the Club to the City forthwith upon demand; and the Club shall cause all registrations of claims for construction liens and certificates of action under The Construction Lien Act and relating to any such work done by or on behalf of the Club, and all such works which the Club is obliged to do, to be discharged or vacated as the case may be within seven (7) days of such registration or within fifteen (15) days after notice from the City, failing which, the City shall have the right to discharge such liens or certificates by payment to the Claimant, payment into Court, or otherwise; and such payment and the City's reasonable legal and other costs of obtaining and registering such discharges shall be recoverable as if the same were rent or payments hereunder and in arrears.

31. The Club waives and renounces the benefit of any present or future Statute taking away or limiting the City's right to distress and covenants and agrees that notwithstanding any such Statute none of the goods and chattels of the Club on the demised premises at any time during the term shall be exempt from the levy by distress for rent or any other charges; all goods and chattels brought by the Club onto the demised premises shall be unencumbered property of the Club and they shall not be subject to any claim or other encumbrances at any time without the written consent of the City. The Club shall not remove its goods, fixtures and chattels from the demised premises, except in the ordinary course of business if any rent or other amounts

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are owing under this Agreement. If the Club shall leave the demised premises, leaving any rent or other amounts owing under this Agreement unpaid, the City, in addition to any other available remedy, may seize and sell the goods and chattels of the Club at any place to which the Club or other person may have removed them in the same manner as if such goods and chattels had remained and had been distrained upon the demised premises.

32. Subject to the terms and covenants of this Agreement, the Club has the use of the tennis court facilities, the fieldhouse and the air-support structure for a term of ten years. This Agreement terminates on October 1st, 2002.

33. The Club unconditionally guarantees prompt payment of the loan or any part thereof and if such repayment is not made by the Club the City will be entitled to assume its rights under the General Security Agreement and the Term Promissory Note upon notice from the City's Commissioner of Finance and Administration.

34. The City hereby also consents to the use of the name Sudbury in the Club's name.

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35. This Agreement may be assigned by Donald Peter Kuyek to the Corporation, Sudbury Winter Tennis Club and when assumed by the said Corporation, Donald Peter Kuyek shall no longer be responsible or liable for the obligations of the Club under this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their proper hands and seals attested by their proper signing Officers in that behalf, as of the day and year first above written.

**THE CORPORATION OF THE CITY OF SUDBURY**

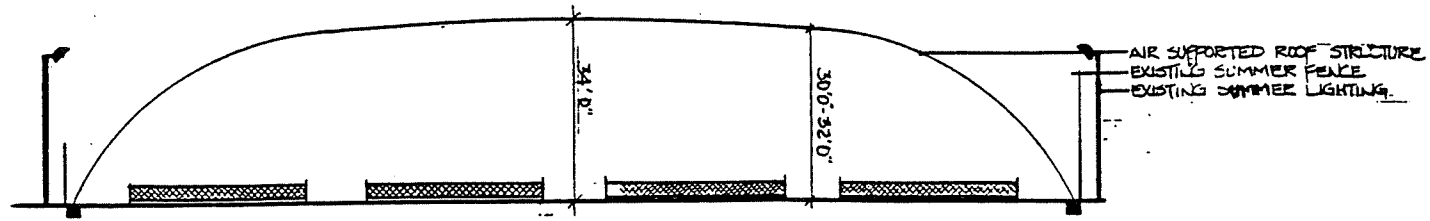
Per: \_\_\_\_\_ Mayor

Per: \_\_\_\_\_ Clerk

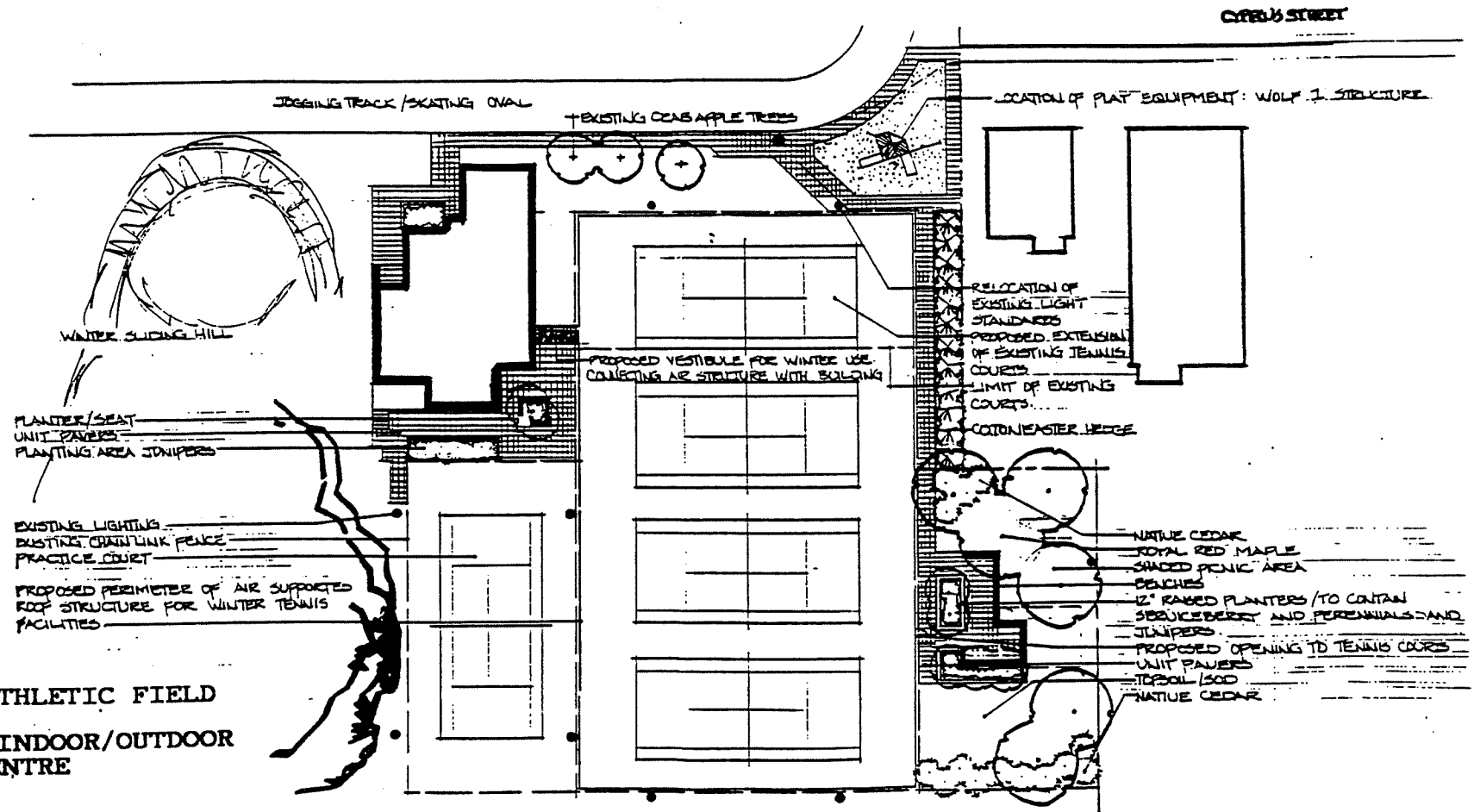
**DONALD PETER KUYEK, In Trust for a company  
to be incorporated in the name of  
SUDBURY WINTER TENNIS CLUB**

Per: Donald Kuyek

Per: \_\_\_\_\_



CROSS-SECTION THROUGH AIR SUPPORTED ROOF STRUCTURE  
SCALE: 1"=10'



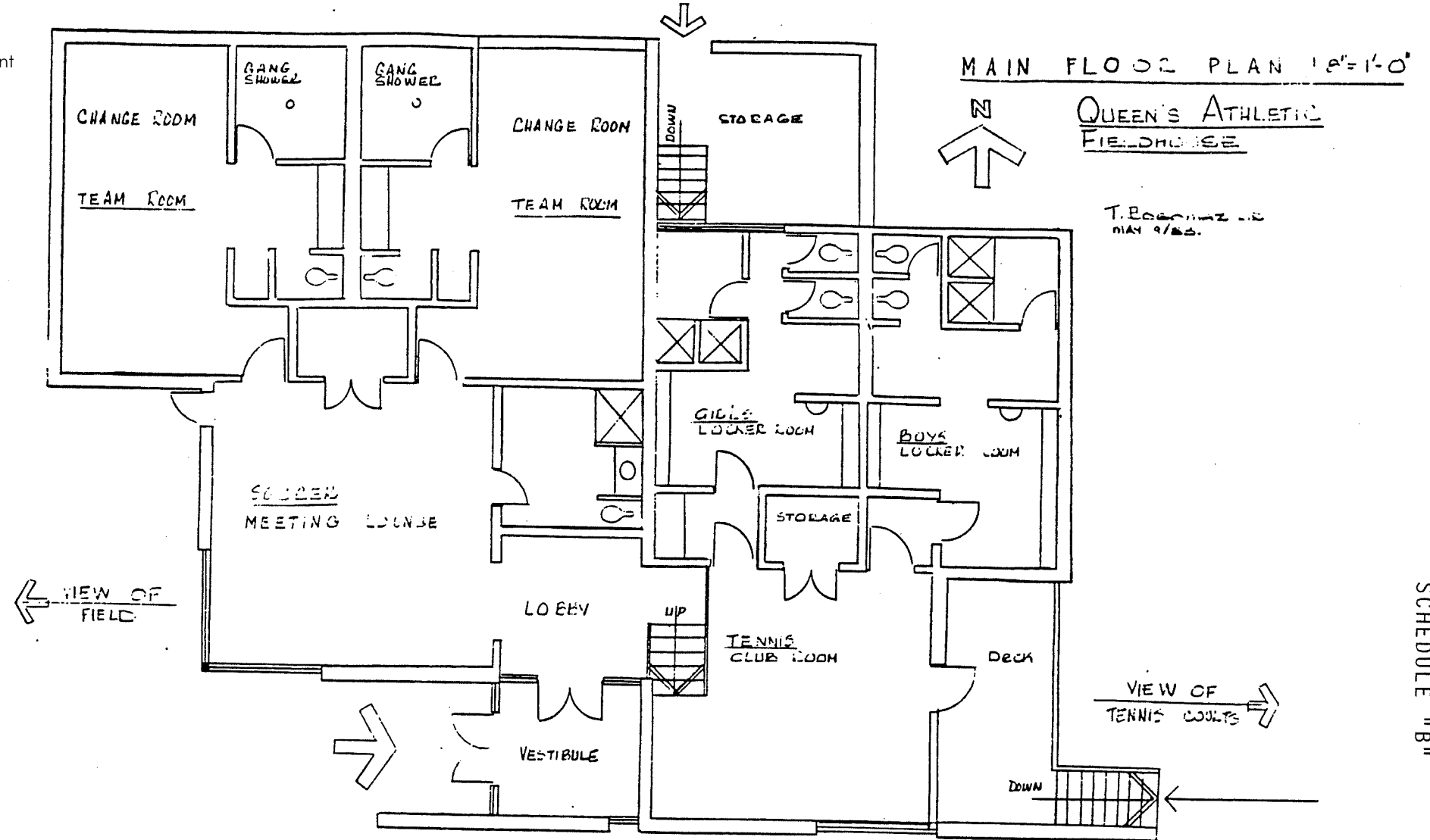
QUEEN'S ATHLETIC FIELD  
PROPOSED INDOOR/OUTDOOR  
TENNIS CENTRE

SCALE: 1"=15'

ALDER STREET

SCHEDULE "A"





SCHEDULE "B"

**THIS LEASE** made as of the 1<sup>st</sup> day of January, 2012, in pursuance of the *Short Forms of Leases Act*.

**B E T W E E N:**

**CITY OF GREATER SUDBURY**

(Hereinafter called the "Landlord")

- and -

**SUDBURY WINTER TENNIS CLUB**

(Hereinafter called the "Tenant")

**WHEREAS** the Landlord is the owner of certain lands municipally known as **0 Cypress Street, Sudbury**, and legally described as PIN 73585-0852 (LT), part of Lot 6, Concession 3, Township of McKim, which is utilized by the Landlord as a public park and recreation area commonly known as Queen's Athletic Field;

**AND WHEREAS** pursuant to Agreement made between the Landlord and the Tenant, dated September 22<sup>nd</sup>, 1992, the Landlord allowed the Tenant to use, for its own purposes, part of a field house at Queen's Athletic Field and to construct a removable, air-supported structure thereon within which the Tenant operated an indoor tennis facility for the use and benefit of its members and the public, on the terms and conditions set out in that Agreement;

**AND WHEREAS** the Agreement between the Landlord and the Tenant expired on October 1<sup>st</sup>, 2002, and the Tenant has requested that the Landlord enter into a new Agreement to allow the continued occupation of part of the field house at Queen's Athletic Field and the continued use of part of the land at Queen's Athletic Field for its structure for the continued operation of the indoor tennis facility;


**AND WHEREAS** the parties wish to set out the terms for the continued use and occupation of part of Queen's Athletic Field by the Tenant as a tennis facility open both to its members and to the public;

**NOW THEREFORE** in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

Terminology

1.(1) For the purposes of this Agreement:

- (a) "Common Areas" includes that portion of the field house structure at Queen's Athletic Field not leased to the Tenant, including the washrooms, shower rooms, locker rooms, walkways to the field house structure, all in common with all others entitled thereto from time to time;
- (b) "Field House" shall mean that portion of the Field House located on Queen's Athletic Field leased to the Tenant pursuant to this Lease as illustrated on the sketch attached as Schedule 'B';
- (c) "Leased Areas" shall mean the Structure Lands and the Field House collectively;
- (d) "Queen's Athletic Field" shall mean property owned by the Landlord municipally known as 0 Cypress Street, Sudbury, and legally described as PIN 73585-0852(LT), part of Lot 6, Concession 3, Township of McKim;
- (e) "Structure" shall mean the removable air-supported structure owned by and erected by or on behalf of the Tenant on the Leased Land which

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structure is commonly referred to as the tennis bubble and includes the enclosed walkway from the Field House to the Structure, all supports and shall also include any replacement structure or structures and any extension to the structure authorized pursuant to this Lease; and

- (f) "Structure Lands" shall mean that part of Queen's Athletic Field leased to the Tenant for the Structure in the approximate location shown on the sketch attached as Schedule 'A'.

The Landlord grants to the Tenant on the terms and conditions set out in this Agreement a lease of the Field House and the Structure Lands, TOGETHER WITH the non-exclusive right for the Tenant, its officers, directors, members, employees, contractors, members, visitor and all those persons permitted on the Leased Areas by the Tenant to use the Common Areas. The right of use of the Common Areas shall be restricted to their intended use and shall be subject to such rules and regulations as may be imposed from time to time by the Landlord. The Landlord may from time to time temporarily obstruct or close off parts or all of the Common Areas in order to carry out maintenance or repair or any municipal purpose, as the Landlord, in its sole discretion, deems advisable and such obstruction or closing of shall not be deemed to be an interference with the Tenant's right of the use thereof. The Landlord shall, in its sole discretion, determine the standard of repair and maintenance, if any to any of the Common Areas.

The Tenant acknowledges that the Leased Areas are within a public park area, and subject to any Parks By-law of the City of Greater Sudbury.

#### Term

2. Unless this Agreement is earlier terminated, the Tenant shall have the right to have and to hold the Leased Areas with all privileges and appurtenances pertaining thereto, for a term of 10 years commencing on the 1<sup>st</sup> day of January, 2012, to and including the 31<sup>st</sup> day of December, 2021 (the "Term").

#### Rent

- 3.(1) In consideration of the Tenant providing tennis facilities for the use and benefit of its members and the public, the Tenant shall not be required to pay any Base Rent to the Landlord.
- (2) The Tenant shall be responsible for and pay all charges, impositions, costs and expenses of every nature and kind relating to the Structure on the Leased Land and all improvements thereon or thereto and to the use and occupancy of the Structure and the Leased Areas except as expressly provided to the contrary herein.
- (3) All payments required to be made by the Tenant pursuant to this shall be payable as additional rent ("Additional Rent"), whether payable directly to the Landlord or not, and whether or not identified herein as 'additional rent'.
- (4) The obligation to pay Additional Rent shall survive the expiry or other termination of this Lease.

#### Real Property Taxes

4. The Tenant covenants to pay as Additional Rent, as and when due, all real property taxes (including taxes for education, schools and local improvements) charged, levied or assessed against Queen's Athletic Field or the Leased Areas, as a result of the Tenant's use and occupation of the Leased Areas and any amounts levied, imposed, assessed or charged in substitution for or in lieu of any of the foregoing. The Tenant acknowledges that as of the Lease

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commencement date, no real property taxes are being levied against the Leased Areas. However, the use and occupation of the Leased Areas by the Tenant may trigger an assessment change resulting in property taxes being levied. The Tenant further understands that any re-assessment and tax impact may be delayed, and result in a retroactive assessment to the date of possession.

#### Tenant - Services to Structure

5. The Tenant covenants to pay as Additional Rent, as and when due and all costs and expenses associated with the extension of or relocation of any natural gas service to the Structure necessary to provide heat, air conditioning, air support or other services for the Structure, the installation of meter, the provision of and the cost of natural gas supplied to or used or consumed within the Structure for any purpose. The Tenant agrees to place in its name the account for the gas service provided to the Structure for which the Tenant is responsible, and further agrees to provide to the Landlord upon request, from time to time, confirmation from the provider that payment is current.

#### Telephone and Similar Charges

6. The Tenant covenants to pay as and when due, all installation charges, monthly services charges and all subsequent charges relating to telephone, internet or cable service or for any other service for the benefit or use of the Tenant placed in or extended to the Leased Areas, or the Structure.

#### Use of Leased Areas

7. During term of the Lease, the Tenant covenants to use the Leased Areas for the operation of an indoor tennis facility and for no other purpose.

#### Accepts in current condition

8. The Tenant accepts the Leased Areas in the current condition and enters thereon solely at the Tenant's own risk.

#### Improvements

- 9.(1) The Landlord acknowledges that the Structure belongs to the Tenant and was constructed as an Improvement with the consent of the former The Corporation of the City of Sudbury, as then owner of Queen's Athletic Field, pursuant to a now expired agreement.
- (2) The Tenant shall not replace or reconstruct the Structure or any part thereof; shall not demolish the Structure or erect a new or replacement Structure; shall not effect any exterior renovations to the Structure or other structure which has been constructed, erected or placed on the Leased Areas; shall not make any installations, alterations, renovations or additions in or about the Field House or any part of the Leased Areas; shall not make any changes in grade, surfacing or landscaping of any part of the Leased Areas; all collectively referred to as "Improvements" unless:
  - (a) the Tenant first secures the consent of the Landlord's Director of Asset Services, to the proposed Improvements, which consent will not be unreasonably withheld but may be given subject to conditions;
  - (b) prior to commencing any approved Improvements, the Tenant obtains at its expense, all necessary permits and licences from any relevant authority, including without limitation, a building permit for the construction or erection of a new or replacement Structure. The consent of the Landlord to the making of Improvements shall not be construed or

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deemed to be a waiver of any obligation to obtain any necessary permit, licence, authorization or approval or construed or deemed to be an approval by the Landlord in its capacity as an issuer of any permit or licence, approval or authorization; and

- (c) the Tenant completes the approved Improvements in a good and workman like manner and in compliance with all laws, the Landlord's reasonable requirements and all other applicable requirements of any relevant Authority.
- (2) If the Tenant performs any Improvements without compliance with all of the provisions of this Section 9, the Landlord shall have the right to require the Tenant to remove such Improvements, forthwith, at the Tenant's expense, and to restore the Leased Areas or Structure to its prior condition.
- (3) The Tenant shall promptly pay for all materials supplied and work done in respect of any Improvements or other work done by the Tenant in the Leased Areas or Queen's Athletic Field except for any amount claimed to be due which is bona fide disputed by the Tenant. The Tenant shall use all reasonable efforts to ensure that no construction or other lien with respect thereto is registered against or attaches to Queen's Athletic Field or any part thereof, or against the Landlord's or Tenant's interest therein. If any such lien is so registered or so attaches, the Tenant shall discharge same at the Tenant's cost within 15 days after receipt of the Tenant of notice of such lien, failing which the Landlord may at its option discharge the lien by paying the amount claimed to be due and such other amount as is required by law into court and the amount so paid and all reasonable expenses of the Landlord (including legal fees and disbursements) shall be paid by the Tenant to the Landlord upon demand and if not so paid, the Landlord shall be entitled to the same remedies and may take the same steps for recovery of the unpaid amounts as if same were rent in arrears.

#### Repair / Replacement

- 10.(1) The parties acknowledge that the Structure is the property of the Tenant and the Tenant is solely responsible, at its own expense, to repair, maintain, replace the Structure, the systems serving the Structure, to keep same in a safe condition and otherwise exercise all incidents of ownership. The Tenant covenants that it shall, at its sole cost and expense at all times during the Term keep and maintain the Structure, including heating, ventilation, plumbing, electrical and other systems therein), and any Improvements, made or owned by it on the Leased Areas, and the Tenant's trade fixtures therein in a first-class condition and state of repair, replacing all or any part thereof as may be required from time to time, as would a prudent owner of such structures and improvements. All such work shall be done in a good and workmanlike manner with due diligence, in accordance with all applicable requirements of any relevant authority.
- (2) The Landlord's Director of Asset Services shall have the right to enter the Structure and the Leased Areas and any building or structure thereon, after giving the Tenant reasonable prior notice, to view the state of repair and condition thereof and the Tenant shall perform any maintenance, repairs or replacements according to the Landlord's notice and the Tenant's obligations hereunder.

#### Notice of Defects

- 11. The Tenant, shall, when it becomes aware of same, give notice to the Landlord of any accident, defect or damage in any part of the Leased Areas or the Common Areas which comes to the attention of the Tenant or any of its employees, members or contractors, notwithstanding the fact that the Landlord may not have any obligation in respect of the same.

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### Keep Clean

12.(1) The Tenant covenants that it shall, at its sole cost and expense:

- (a) keep the Structure and Leased Areas clean and free from waste, refuse, garbage, litter and other objectionable material;
  - (b) implement appropriate programs for the management of waste, prohibited waste, and recyclable materials, as would a reasonably prudent Tenant in the circumstances of the Tenant; and
  - (c) arrange as necessary, for the removal and appropriate disposal of all waste, prohibited waste and recyclable material generated on or about the Structure or Leased Areas.
- (2) For the purposes of Subsection 12.(1), "waste", "prohibited waste" and "recyclable materials" shall have the meaning assigned in the Waste Management By-law of the City of Greater Sudbury in effect from time to time.

### Keys and Security

- 13.(1) The Tenant shall control and limit the provision and use of keys and other devices permitting entry to the Field House and the gate to Queen's Athletic Field as would a reasonably prudent Tenant, and shall surrender to the Landlord upon expiry or other termination of the Lease, all keys and other devices permitting entry to the Field House, to the gate to the fence around Queen's Athletic Field and to the Structure, should the Tenant determine not to remove same.
- (2) The Tenant shall comply with any requirements established by the Landlord from time to time with respect to security systems and procedures for the security and safety of the Field House and Queen's Athletic Field including restricting or prohibiting access during non-business hours.

### Hazardous Materials/Waste

14. The Tenant covenants that it shall:

- (a) not store, bring in or permit to be placed, any environmental contaminant or hazardous material in the Leased Areas or Structure; and
- (b) at its expense, remove any hazardous waste material from the Structure or Leased Areas in accordance with applicable legislation and regulations.

### Floors/ Electrical Systems

- 15.(1) The Tenant covenants that it shall not bring or permit to be brought into any part of the Field House, any machinery, equipment, object or thing that by reason of its weight, size or use, might damage or endanger any part of the Field House and shall not at any time overload or permit the overloading of the floors of the Field House.
- (2) The Tenant shall not bring any material or equipment which could cause undue loads on electrical circuits or undue vibration, heat or noise into the Field House or any part of the Leased Areas or Structure or use or permit same to be used therein by or on behalf of the Tenant.
- (3) The Tenant shall not do, cause or permit to be done, any act or thing on the Leased Areas or in the Structure which may damage, injure or impair the operation of any drainage system, sanitary sewer system, or any facility provided for the protection of the general public or the operation of the Field House in general or for Queen's Athletic Field in general. Without limiting the generality of

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the foregoing, the Tenant shall not discharge, cause or permit to be discharged or howsoever to pass into the sewer system, storm drains or surface drainage facilities at the Leased Areas, any deleterious material, noxious, contaminated, poisonous or hazardous substances, all as determined by the Landlord.

#### Not Increase Insurance Costs or Fire Risk

16. The Tenant shall not use or permit the Leased Areas or Structure to be used for any purpose, or keep or permit to be kept anything on the Leased Areas or Structure, which may cause or result in any increase in premiums for any insurance, or cause or result in the cancellation of any insurance, carried by the Landlord with respect to any part of the Leased Areas and forthwith upon request of the Landlord, shall discontinue any such use of the Leased Areas cease to keep any such thing on the Leased Areas or in or about the Structure and shall not do or permit to be done in the Leased Areas or Structure or bring or keep anything therein which will in any way increase the risk of fire or violate or act at variance with the laws relating to fires or with the regulations of the Fire Department or Health Unit.

#### Tenant Other Covenants

- 17.(1) The Tenant covenants that during the Term of the Lease it will, at its expense:
- (a) comply with all plans, policies, rules and regulations of general application to Queens Athletic Field or the Field House which may be established by the Landlord from time to time; and
  - (b) comply with any policy implemented by the Landlord from time to time, for conservation of energy and water;
- (2) The Tenant will not use any means of heating or cooling the Field House other than that provided by the Landlord, or of heating or cooling the Structure, other than as permitted by the Landlord.

#### Signs

- 18.(1) The Tenant shall not erect, install or display any sign on the Leased Areas which can be viewed from outside the Leased Areas, without the prior written consent of the Landlord's Director of Assets Services as to size, design, location, specifications and method of installation, which approval will not be unreasonably withheld.
- (2) The Tenant shall erect, install or affix any sign authorized under this Lease at its own cost and expense and in a safe and secure fashion and shall thereafter maintain any such sign in a good condition and state of repair.
- (3) The Tenant shall comply with the City of Greater Sudbury's By-law in effect from time to time, and secure any necessary permits or approvals prior to erection of any sign. No consent by the Landlord's Director of Asset Services to the affixing, erection or installation of a sign shall be deemed to be in lieu of such compliance.

#### Noise, Odours, Nuisance etc.

- 19.(1) The Tenant shall not cause, permit or suffer any unusual or objectionable noises or odours to emanate from the Structure or Leased Areas or to be caused by or result from its use of the Leased Areas or the Structure thereon.
- (2) The Tenant shall not do, permit or keep at or on the Leased Areas or in any structure, building or improvement thereon, any thing which is or may be a

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nuisance or which causes or may cause damage to or interfere with normal usage of any adjoining property.

#### Comply with Laws

20. The Tenant shall observe and comply, at its own expense, with all applicable by-laws, rules and regulations of the municipality and any statutes, regulations, rules of any federal, provincial or municipal authority, respecting the use, conduct of the operations of the Tenant, access to services and facilities in the Leased Areas, the condition and occupation of the Leased Areas and all buildings, structures, equipment and improvements located therein and to obtain from the appropriate authorities and maintain in good standing, all necessary permits, licences and approvals to permit the Tenant to conduct its business / operations on the Leased Areas and to occupy the Leased Areas.

#### Not Block Ingress/Egress Routes

21. The Tenant shall not block and shall not cause, authorize or permit its officers, directors, employees, members, contractors or persons it authorizes on the Leased Areas to block or obstruct any Common Area.

#### Release

22. The Tenant agrees that the Landlord, its officers, directors, employees, agents, and those for whom the Landlord is at law responsible, shall not be liable for any personal injury to, bodily injury to (including death of) or for any damage or loss to any property (including loss of use thereof) or for any incidental, indirect, special or consequential damages or any loss of use, revenue or profit arising out of or in anyway related to the use or occupation of the Leased Areas or Common Areas, or any building, structure, improvement, equipment, property thereon, which is or may be suffered or incurred by the Tenant or its officers, directors, members, employees, agents, servants, contractors, subcontractors, guests, licensees, volunteers or invitees, for any reason whatsoever, unless caused by or resulting from the negligence of the Landlord, its employees or agents while acting within the scope of his or her employment or agency respectively.

#### Tenant's Insurance

- 23.(1) The Tenant shall place and at all times, maintain during the currency of this Lease, with an insurer licenced to operate in Ontario, general commercial liability insurance in the amount of not less than \$2,000,000 per occurrence, insuring against any claims for personal injury, death or loss or damage to property arising out of any act or the operations of the Tenant under this Lease, or of the Acts or omissions of the Tenant or any of the Tenant's agents, employees or servants and such insurance shall be with a company or companies acceptable to the Landlord. The Tenant shall provide or cause to be provided to the Landlord, a Certificate from its insurer, in the Landlord's standard form, which shows that the policy or policies placed and maintained by it complies with the requirements of this Lease and shall refer to the Landlord as an additional insured. No review or approval of any such insurance certificate by the Landlord shall derogate from or diminish the Landlord's right or the Tenant's obligation contained in this Lease.
- (2) The Insurance policy shall provide that the insurance policy will not be cancelled, terminated or reduced in coverage without 30 days prior written notice by prepaid registered post addressed to the Landlord at the address indicated in Section 34 (Notices) below. Should the Landlord be of the opinion that the insurance taken out by the Tenant is inadequate in any respect for any reason whatsoever, it shall forthwith advise the Tenant of its reasons therefore and the Tenant shall forthwith obtain additional insurance satisfactory to the Landlord.

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- (3) The Tenant shall not do or omit to do or suffer anything to be done or omitted to be done on the Leased Areas which will in any way impair or invalidate such policy or policies.
- (4) If any policy of insurance upon the Leased Areas or the contents shall be cancelled or refused to be renewed or granted by an insurer by reason of the use or occupation of the Leased Areas by the Tenant or any of its employees, servants, or agents, the Tenant shall immediately remedy or rectify such use or occupation.
- (5) The issuance of any policy of insurance hereunder shall not relieve the Tenant of any of its obligations under this Lease.
- (6) The Tenant shall place and shall at all times maintain during the currency of this Lease, insurance against fire with respect to any improvements, buildings, or structures constructed, brought or placed upon the Leased Areas by the Tenant during the term of this Lease, and any renewals hereof and all policies for such insurance shall be in an amount and in a form satisfactory to the Landlord.

#### Indemnity

24. The Tenant undertakes and agrees to indemnify and save harmless the Landlord and its officers, employees, and agents, from and against all claims, demands, loss, cost, expenses, actions and other proceedings incurred, made, brought or prosecuted in any manner based upon, occasioned by or attributable to by reason of the Tenant's use or occupation of the Leased Areas, the Structure or Common Areas, the exercise or non-exercise of any right or obligation hereunder, or by the Tenant's negligence or that of its employees, agents, volunteers or persons permitted on the Leased Areas or Common Areas or the Structure by the Tenant or by reason of any injury to any person or property in or upon the Leased Areas or Structure from any cause whatsoever and such indemnity shall include all legal costs incurred by the Landlord (including fees and disbursements) and any administrative costs incurred by the Landlord. This obligation to indemnify shall survive the expiry or other termination of this Agreement.

#### Quiet Enjoyment

25. The Landlord covenants that the Tenant may peacefully and quietly have, hold, occupy, possess and enjoy the Leased Areas for the term of the Lease, provided the Tenant pays any additional rent and other sums it is required to pay hereunder, as set out and keeps, observes and performs all of the other covenants and provisions as required in this Lease.

#### Landlord's Obligations

- 26.(1) The Landlord covenants that it will provide at its expense, and to standards established by the Landlord from time to time:
  - (a) electricity, water, heat, to the Field House and where applicable, to the Common Areas;
  - (b) electricity to the Structure for lights;
  - (c) cleaning and janitorial services for the Common Areas, where applicable; and
  - (d) winter and summer maintenance of the pathways to the Leased Areas which form part of the Common Areas.

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- (2) Except as otherwise provided herein, the Landlord shall, at its expense, maintain and repair the heating, electrical and plumbing systems in the Field House and Common Areas in good working order and shall replace in whole or in part any such system or systems should the Landlord, in its sole discretion, determine it is appropriate to do so.
- (3) The Landlord is not liable for interruption or cessation of, or failure in, the supply of utilities, services or systems in, to or serving the Field House where they are supplied by the Landlord or others, unless the interruption or cessation has been cause, or to the extent contributed to, by the act, omission, negligence, fault or default of the Landlord.

#### Structural Repair

- 27.(1) Except as otherwise provided herein, the Landlord shall, at its expense, maintain the foundation, the outer walls, the floors and roof of the Field House building on Queen's Athletic Field, including the Field House in proper structural repair.
- (2) The Tenant covenants to permit the Landlord and its agents, contractors and employees to enter upon the Field House to make any necessary structural repairs to the Field House building on Queen's Athletic Field, including the Field House or repairs or replacements to the systems serving the Field House or field house building. Such entry shall be at reasonable times and upon prior reasonable notice, except in instances of emergency, when entry may be made at any time and without notice.
- (3) If the Field House building on Queen's Athletic Field, including without limitation, any part of the heating, electrical or plumbing system or other equipment of the Landlord in the Field House building; the roof; the outside walls; or the exterior doors; become damaged or destroyed through the negligence, carelessness of the Tenant or anyone permitted by the Tenant to be in the Leased Areas or Structure, the expense of any necessary repairs, replacement or alterations shall be paid by the Tenant to the Landlord forthwith upon demand, despite any provision to the contrary in this Lease.

#### Termination By Landlord

28.(1) It is expressly agreed that:

- (a) if the Tenant shall be in default in the payment of rent or amounts payable hereunder as Additional Rent, whether lawfully demanded or not, and such default shall continue for a period of 15 days after the Additional Rent has become due and payable, or
- (b) if the Tenant shall be in default of any of its covenants or agreements hereunder (other than its covenant to pay Additional and such default shall continue for a period of 30 days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after written notice by the Landlord to the Tenant specifying with reasonable particularity the nature of such default and requiring the same to be remedied; or
- (c) if the Tenant shall make an assignment for the benefit of creditors, or shall make an assignment or have a receiving order made against it under the *Bankruptcy and Insolvency Act*, or becoming bankrupt or insolvent shall make application for relief under the provisions of any statute now or hereinafter in force concerning bankrupt or insolvent debtors, or any action whatsoever, legislative or otherwise shall be taken with a view to the winding up, dissolution or liquidation of the Tenant; or

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- (d) this Lease or any of the goods or chattels of the Tenant on the Leased Areas are at any time seized or taken in execution or in attachment by any creditor of the Tenant; or
- (e) the Tenant executes any chattel mortgage or bill of sale of any of its goods and chattels, including the Structure or any replacement Structure, other than a bill of sale of any of its goods in the ordinary course of the Tenant's business, without the prior written consent of the Landlord; or
- (f) any distress is levied upon any of the Tenant's Goods upon the Leased Areas; or
- (g) the Tenant ceases to operate an indoor tennis facility on the Leased Areas.

then at the option of the Landlord the term hereby granted shall become forfeited and void, and the Landlord may without notice of any form of legal process whatsoever forthwith re-enter upon the Leased Areas, the Structure, or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding.

- (2) No condoning, excusing, overlooking or delay in acting upon by the Landlord or any default, breach or non-observance by the Tenant at any time or times shall operate as waiver of the Landlord's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance by the Tenant unless the Landlord has signed an express waiver in writing.
- (3) All rights and remedies of the Landlord under this Agreement are cumulative and not alternative.

#### Termination by Tenant

- 29. Despite anything else herein, the tenant may terminate this lease upon ninety (90) days written notice to the City, given in accordance with this Agreement and specifying the date of termination.

#### Recovery of Damages

- 30. If the Landlord at any time should terminate this Lease for any breach by the Tenant, it may recover from the Tenant all damages it incurs by reason of such breach, including the cost of recovering the Leased Areas, solicitor's fees (on a substantial indemnity basis) all of which amounts shall be immediately due and payable by the Tenant to the Landlord and if not paid, shall bear interest at the rate established by By-law for amounts owing to the City of Greater Sudbury.

#### Vacant Possession on Expiry or Termination

- 31. The Tenant covenants to deliver vacant possession of the Leased Areas to the Landlord at the expiry or other termination of this Lease, in the condition in which the Tenant is required to maintain the Leased Areas, reasonable wear and tear excepted and subject to Section 31.

#### Removal of Structure - End of Term

- 32. The Structure, and any systems servicing the Structure, all trade fixtures and other improvements to the Structure and to the Leased Areas shall, upon the expiry or earlier termination of this Lease shall be vested in the Landlord without any right to compensation on the part of the Tenant; nevertheless, the Landlord shall have the right of compelling the Tenant upon written notice, to remove the Structure, and any systems servicing the Structure, all trade fixtures and other

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improvements to the Leased Areas, and the Tenant shall be so bound to do so, at its cost and expense and shall restore the Structure Lands to a condition comparable to the surrounding lands at Queen's Athletic Park and the Field House to a condition comparable to the rest of the Field House, all at the cost and expense of the Tenant and without any right on the part of the Tenant to seek compensation for any reason whatsoever.

- (2) Should the Tenant fail to remove the Structure as directed by the Landlord, the Landlord shall have the right, in its sole discretion, but not the obligation to remove, store, sell, destroy or otherwise dispose of the Structure, and associated attachments and shall not be accountable for any of the foregoing or for any proceeds of same. The Tenant shall pay to the Landlord forthwith upon demand, any costs incurred by the Landlord (including legal fees and administrative costs) in the exercise of such rights. This obligation shall survive the expiry or other termination of this agreement. Any unpaid amount shall bear interest from the date due until payment in full, in accordance with the rate applicable to monies owing to the Landlord as established by By-law.

#### Right of Re-entry to Perform Covenants

33. If the Tenant should default in the performance of any covenant in this Lease (except a covenant to pay rent) and if such default should continue for 10 business days, the Landlord may perform that covenant on the Tenant's behalf and may enter the Leased Areas for that purpose and shall not be liable to the Tenant for any loss or damage to the Tenant's stock, furnishings or business so caused. If the Landlord at any time is compelled or elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding based upon any default of the Tenant under this Lease (including any action or proceeding against the Tenant) any reasonable sum including solicitor/client costs so paid by the Landlord together with all interest and damages shall be payable the Tenant on demand as additional rent and if unpaid, shall be treated as unpaid rent or additional rent.

#### Overholding

34. If the Tenant continues to occupy the Leased Areas after the expiration of this Lease without any further written agreement, the Tenant shall be a monthly Tenant, on the same terms and conditions regarding Additional Rent as in effect for the last month of the term immediately preceding the expiration and otherwise on the terms and conditions as herein contained.

#### Notices

- 35.(1) All notices which it may be necessary or proper for either party to serve upon the other shall be served by delivery to the person to whom the notice is to be given or sent postage pre-paid to the following addresses or by facsimile transmission to the facsimile number set out below:

To the Landlord: CITY OF GREATER SUDBURY  
200 Brady Street  
P.O. Box 5000, Station 'A'  
Tom Davies Square  
Sudbury ON P3A 5P3

Attention: Director of Asset Services  
Facsimile number: (705) 673-5171

To the Tenant: SUDBURY WINTER TENNIS CLUB  
P.O. Box 545, Station 'A'  
Sudbury ON P3E 4P8

Attention: Janice Worms, President  
Phone: (705) 560-4758

- (2) Service shall be deemed effective immediately, upon delivery in person, or if mailed, on the fifth day after mailing, or if sent by facsimile transmission, on the same day, if transmitted before 4:00 p.m. on a day which is a business day and on the next following day which is not a statutory holiday, or weekend, if transmitted after 4:00 p.m.
- (3) Either party may from time to time specify in writing a new address to which any such notice shall thereafter and until further notice be sent.
- (4) In the event of a mail disruption or threatened mail disruption, no notices shall be served by mail.

#### Right to Register Notice of Lease

36. The Tenant covenants and agrees with the Landlord that the Tenant will not register this Lease in the Land Titles Office save and except any registrations necessary to evidence a mortgage of the Lease, the consent to the registration of which shall not be unreasonably or arbitrarily refused or delayed. If the Tenant desires to make a registration for the purpose only of giving notice of this Lease, then the parties hereto shall execute a short form hereof, in a form acceptable to the Landlord, solely for the purpose of supporting an application for registration of notice hereof. Upon the termination of the Lease for any reason, the Tenant covenants to co-operate as necessary, and sign such documentation as may be necessary to support an application to amend the register to remove the notice from title, upon request of the Landlord. All costs for the preparation of the documentation to register the notice, and to remove the notice from title, together with associated registration costs shall be borne by the Tenant.

#### Not Liable for Damage - Public Works - Actions of Others

37. The Landlord and its agents shall not be liable for any loss or damage caused by the construction of any public or quasi-public works or for any loss or damage caused by acts of omissions of any other Tenant or any occupant of the Leased Areas, its or their employees or agents, or any person not the employee or agent of the Landlord.

#### Waiver or Condonation of a Breach

38. No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

#### Assignment or Subletting

- 39.(1) The Tenant may not sublet or assign or transfer its interest or any portion thereof in this Lease. The Tenant acknowledges that this Lease has been entered into in recognition of the value to the City of provision of an indoor tennis facility, operated by a non-profit corporation, which is open to the public, and as such is not assignable.
- (2) For the purpose of this Section 38, any change in the corporate structure of the tenant shall be deemed an assignment by the tenant of this Lease.

#### Force Majeure

40. The parties shall not be liable for any failure to perform their obligations hereunder if the non-performance is due to lightning, tempest, explosion,

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earthquake, acts of God, mob violence, acts of the Queen's enemies, strikes, lockouts or labor disruption or any catastrophic cause beyond their control.

The provisions of this Section 39 shall not operate to excuse the Tenant from the payment of Additional Rent in the amounts and at the times specified in this Lease. The parties agree that the party claiming the benefit of Force Majeure shall inform the other party in writing promptly on learning of such delay and shall, where possible, use commercially reasonable efforts to mitigate the effect of such delay.

#### General

41. All of the provisions of this Lease are to be construed as covenants and agreements as though words importing such covenants and agreements were used in each separate paragraph hereof.
42. All obligations of the Tenant shall expressly or by their nature survive termination or expiration of this Agreement and shall continue in full force subsequent to and notwithstanding such termination or expiration until and unless they are satisfied or by their nature expire.
43. This Agreement and the attached Schedules embody the entire Agreement and supercedes any other understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution.
44. Unless otherwise specifically provided in this agreement, no consent or approval of the Landlord shall be unreasonably withheld or delayed and all determinations and decisions by the Landlord shall be made by the Landlord acting reasonably.
45. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
46. All provisions herein shall be binding upon the parties hereto and shall enure to the benefit of the parties hereto and their respective heirs, executors, estate trustees, successors and assign.
47. This Agreement shall be read with the appropriate changes in gender and number as may be required in the circumstances.

**IN WITNESS WHEREOF** the parties sign the within Agreement by its duly authorized signing officers in that regard.

#### **CITY OF GREATER SUDBURY**

Per:

*Daniel Breen*  
Director of Asset Services

#### **SUDBURY WINTER TENNIS CLUB**

Per:

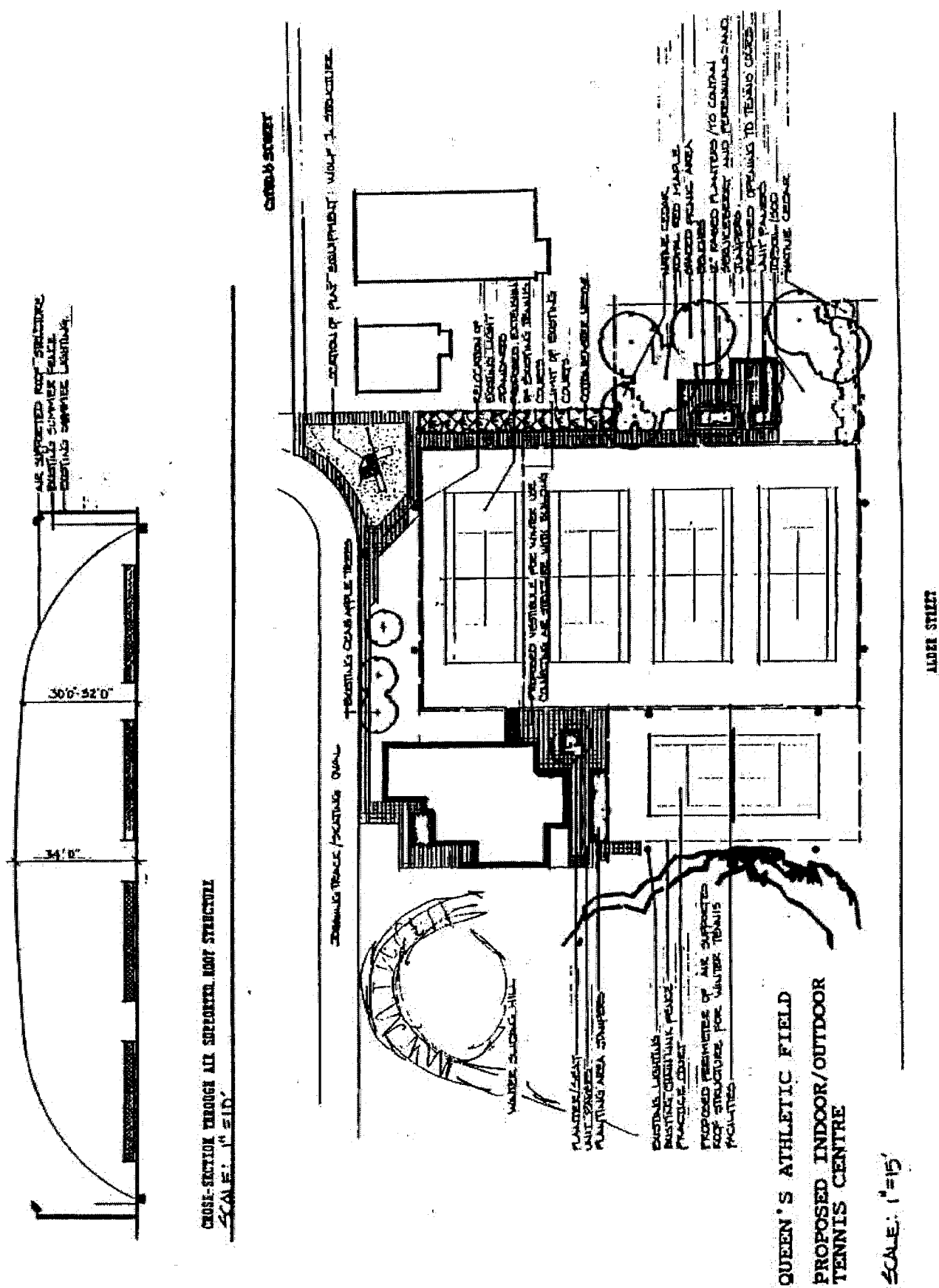
*Janice Worms*  
*Janice Worms*  
(Print Name, Title)

*President*

*Sudbury Indoor Tennis Centre*  
(Print Name, Title)

I/We have authority to bind the Corporation.

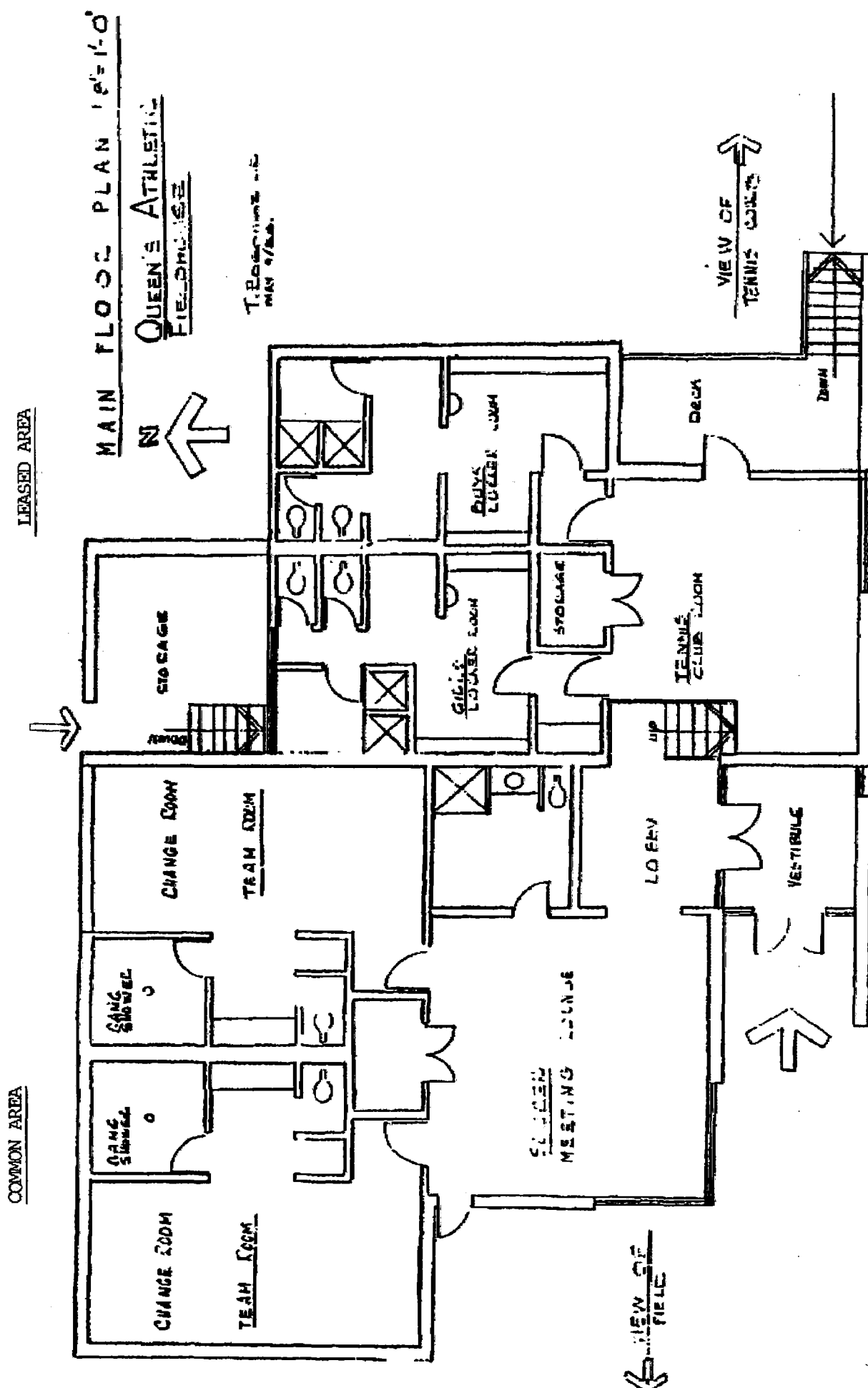
### Schedule 'A'



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## Schedule 'B'





**DATED** this 1<sup>st</sup> day of January, 2012

**CITY OF GREATER SUDBURY**

- and -

**SUDBURY WINTER TENNIS CLUB**

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**L E A S E**

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CITY OF GREATER SUDBURY  
Real Estate Section  
P.O. Box 5000, Station A  
200 Brady Street  
Sudbury ON P3A 5P3

**Katherine Bowschar-Lische**  
Property Administrator  
(705) 674-4455 ext. 2522

\*sb