

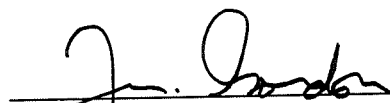
BY-LAW 92-185

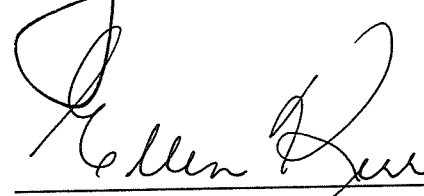
BEING A BY-LAW OF THE CORPORATION OF THE CITY OF
SUDBURY TO AUTHORIZE THE MAYOR AND CLERK TO EXECUTE
AN AGREEMENT TO LEASE PART OF THE ALDER STREET
TENNIS COMPLEX AND PART OF THE QUEEN'S ATHLETIC
FIELDHOUSE IN THE CITY OF SUDBURY BETWEEN THE
CORPORATION OF THE CITY OF SUDBURY AND DONALD PETER
KUYEK, 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 |
|--|--|---|

(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

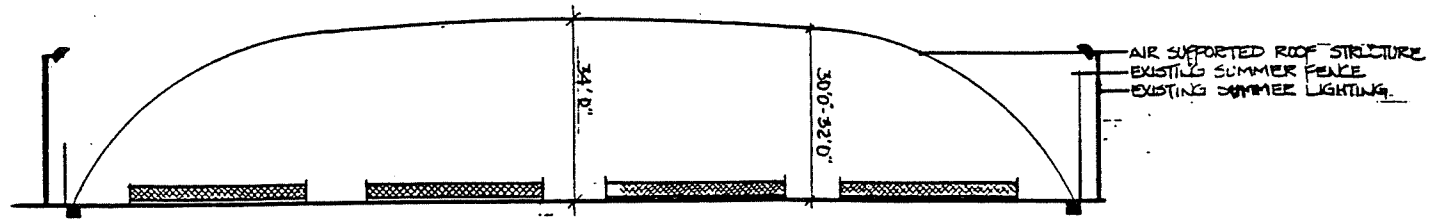
Per: _____ Mayor

Per: _____ Clerk

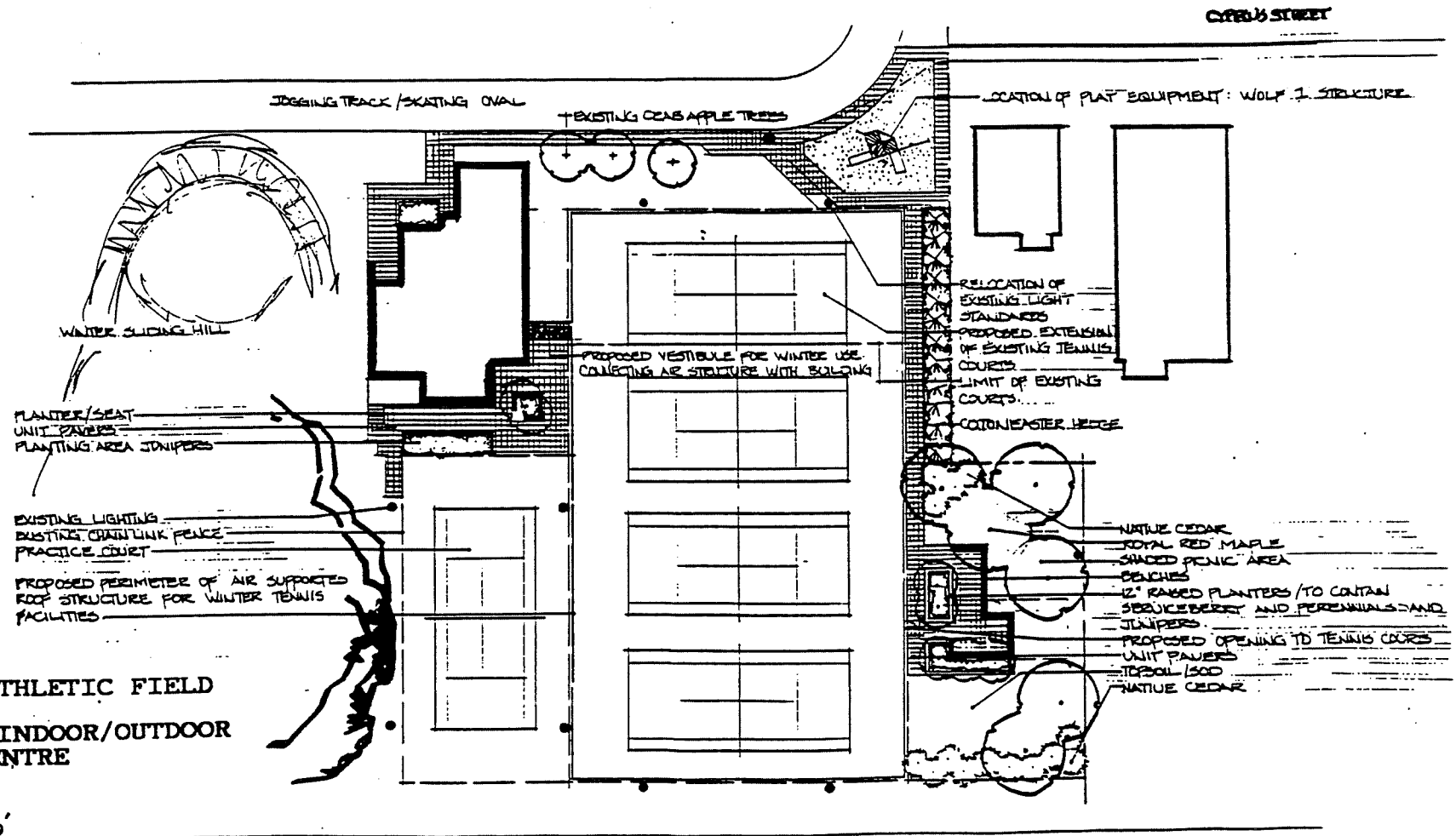
**DONALD PETER KUYEK, In Trust for a company
to be incorporated in the name of
SUDBURY WINTER TENNIS CLUB**

Per: Donald Kuyek

Per: _____



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

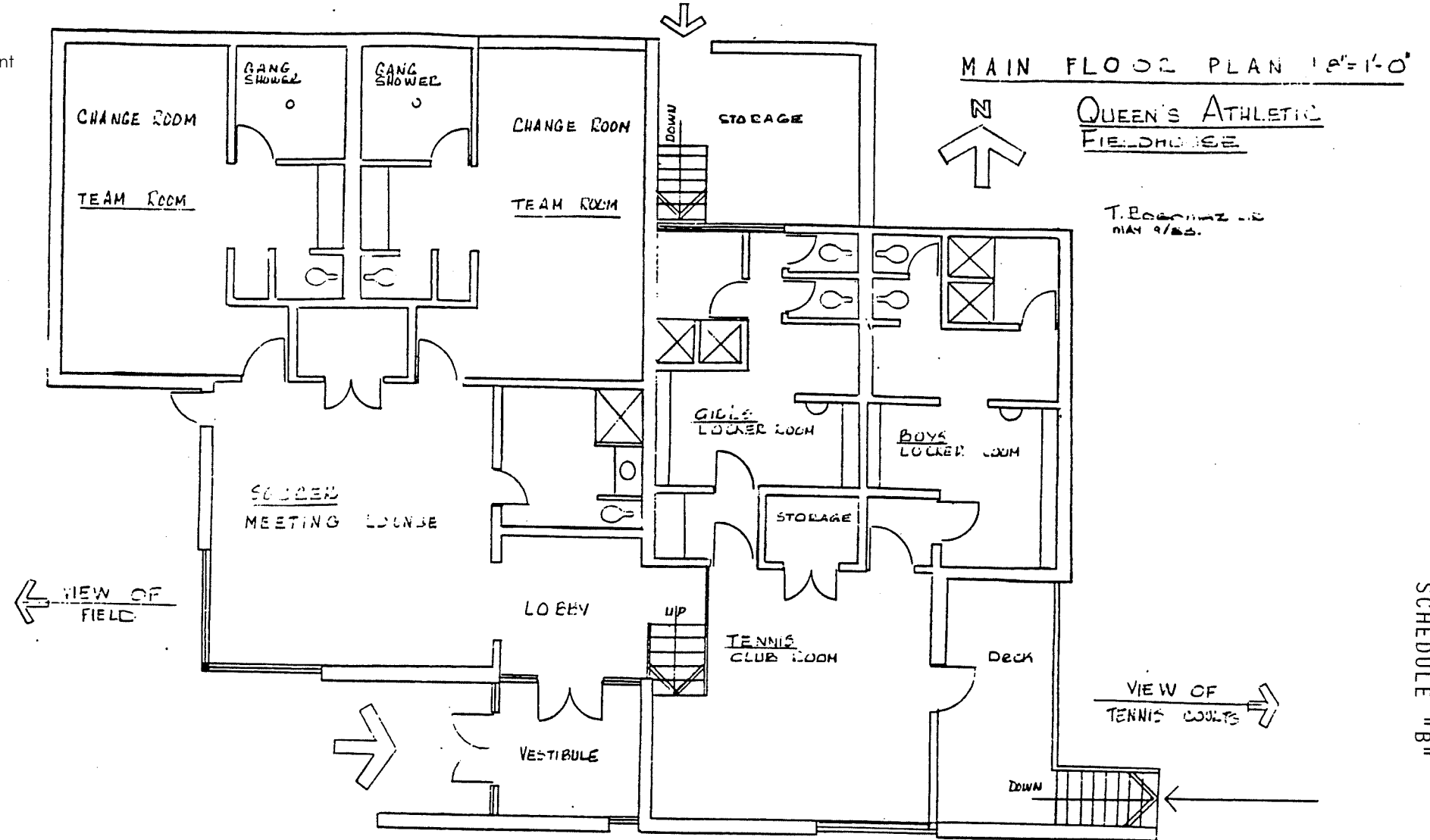


QUEEN'S ATHLETIC FIELD
PROPOSED INDOOR/OUTDOOR
TENNIS CENTRE

SCALE: 1"=15'

ALDER STREET

SCHEDULE "A"



SCHEDULE "B"