
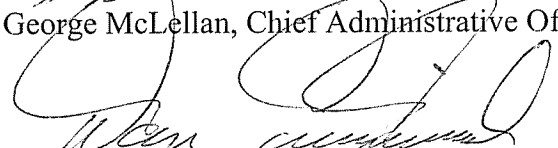

Halifax Regional Council
March 19, 2002

TO: Mayor Peter Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: February 12, 2002

SUBJECT: Dartmouth Titans Gymnastic Club

ORIGIN

Staff

RECOMMENDATION

It is recommended that :

1. Council authorize the Mayor and City Clerk to execute a lease in the general form as shown in Schedule "B" for a portion of land situated at 17 Acadia Street / Ragus Road (behind Bowles Arena).

BACKGROUND

The Dartmouth Titans Gymnastics Club is a reputable gymnastics club in Atlantic Canada. The Club has a stable membership of approximately 500 members, most of whom are involved in recreational gymnastics ranging from preschoolers to young adults. In addition to the range of recreational opportunities, training opportunities are offered for some of the best competitive gymnastics in Canada.

The Club currently operates from the Eric Spicer Building on Mount Hope Avenue in Dartmouth. HRM has recently extended the Dartmouth Titan lease until November 2002, at which time, the space is required for HRM use.

For some time, the Dartmouth Titans had examined a number of potential sites to meet its current need of 12, 000 square foot facility. The site behind the Bowles Arena is considered to be the most viable, in order for the Club to retain its current membership and experience significant growth.

DISCUSSION

Dartmouth Titans Gymnastics Club is proposing to construct, at its own expense, a 12, 000 square foot building. HRM Staff and Titan's Committee Members are in the process of obtaining estimations on the cost of the building. The business plan will be reviewed and approved by HRM staff.

The proposed building is to be located approximately 70 feet to the rear of the existing Bowles Arena. The Municipal Government Act requires that land be subdivided when leased for more than twenty (20) years, therefore a subdivision is required to located the proposed building on this site. The lot being created will be approximately 53,175 square feet in area, and will have 50 feet of frontage on Acadia Street. An access easement over the existing Bowles Arena parking lot will provide vehicular access to the proposed building. (See Attachment "A")

Staff are recommending the following business terms and conditions of lease:

KEY BUSINESS TERMS AND CONDITIONS OF LEASE	
Property Address	17 Acadia Street & Ragus Road, Dartmouth (Behind Bowles Arena)
Site Area	53,175 square feet (approximate)
Zoning	I-1, Light Industrial Zone
Tenant	Dartmouth Titans Gymnastics Club

Term	25 years
Extension	increments of 5 years, upon request of Tenant and at discretion of Municipality (terms and conditions to be negotiated)
Annual Rent	\$100.00
Key Terms of Lease	<ul style="list-style-type: none">• 200 hours per year use of services and facility by Recreation Services, hours to be established & mutually agreed upon by Tenant and Recreation Services• Municipality may terminate lease at anytime in the event that the leased lands are required for municipal purposes (reimbursement to be negotiated at the time of termination)• At conclusion of the term of the lease, if Municipality determines that the building is to be retained, Tenant shall be reimbursed that value of the building (to be negotiated)• At conclusion of the term of the lease, if Municipality determines that the building is not to be retained, Tenant to remove building and floor slab• The cost of construction of building, landscaping, maintenance, and taxes are the responsibility of Tenant

BUDGET IMPLICATIONS

The recommended course of action will have no direct impact upon the HRM's budget. Compensation to the municipality will be in the form of 200 hours per annum of facility time to be programmed by Recreation Services.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies, and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Decline approval of the lease. This is not recommended as HRM stands to lose the benefit of a private sector initiative from which the public can benefit.

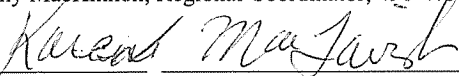
ATTACHMENTS

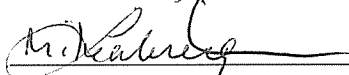
SCHEDULE "A" - Site Plan
SCHEDULE "B" - Lease

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Kathy MacKinnon, Regional Coordinator, 490-4734

Report Approved by:


Karen MacTavish, Director, Parks & Recreation 490-4734


Mike Labrecque, Director, Real Property Services 490-4851

ATTACHMENT "A"

Dartmouth Titans Gymnastics Club - Proposed Lease

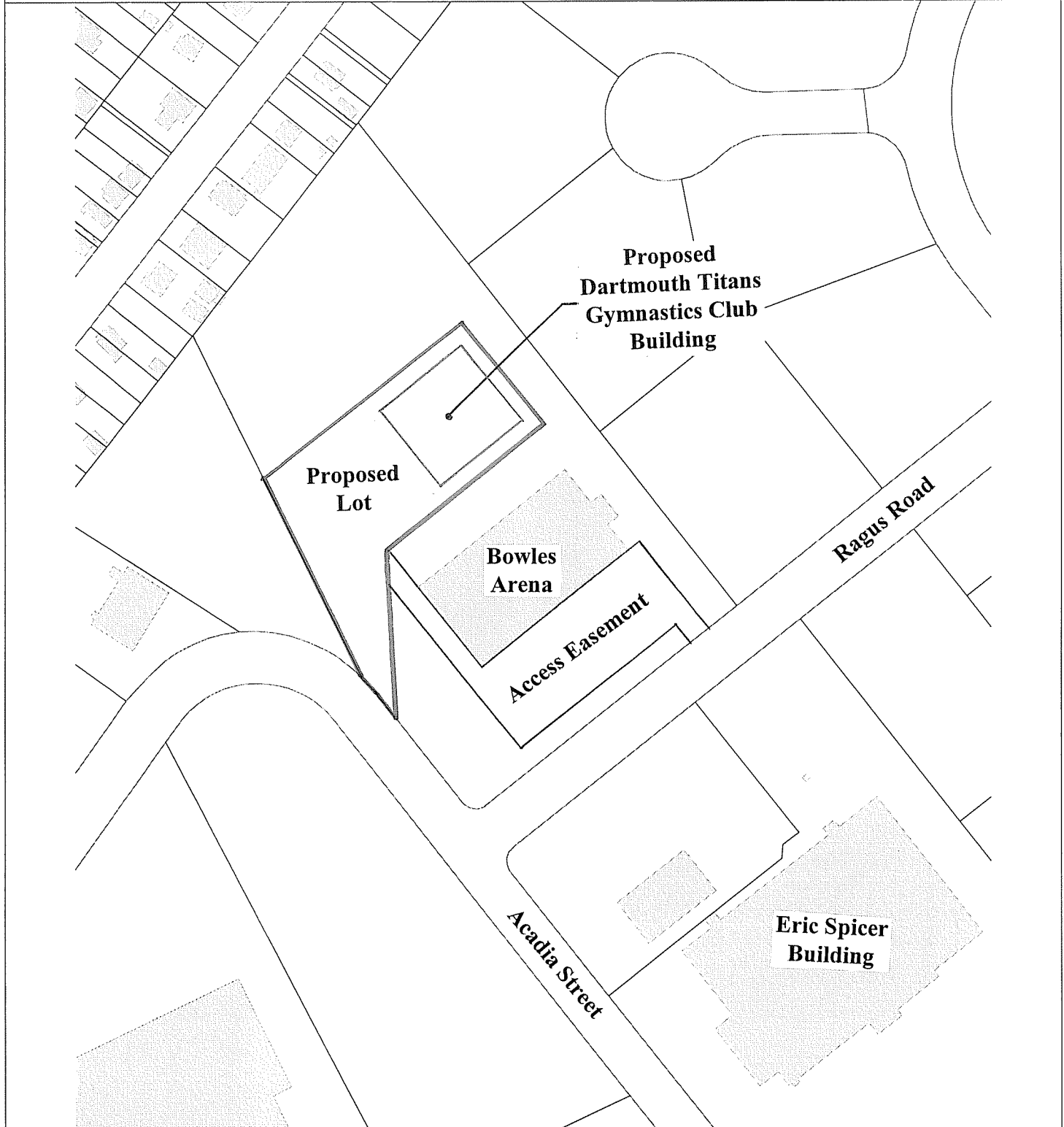
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ReGIS
Real Estate B&W Laser Plot

SITE PLAN



This plan was prepared for the internal purposes of Halifax Regional Municipality (HRM).
HRM does not guarantee the accuracy of any representation on the plan.

Scale 1: 1989



ATTACHMENT "A"

Dartmouth Titans Gymnastics Club - Proposed Lease

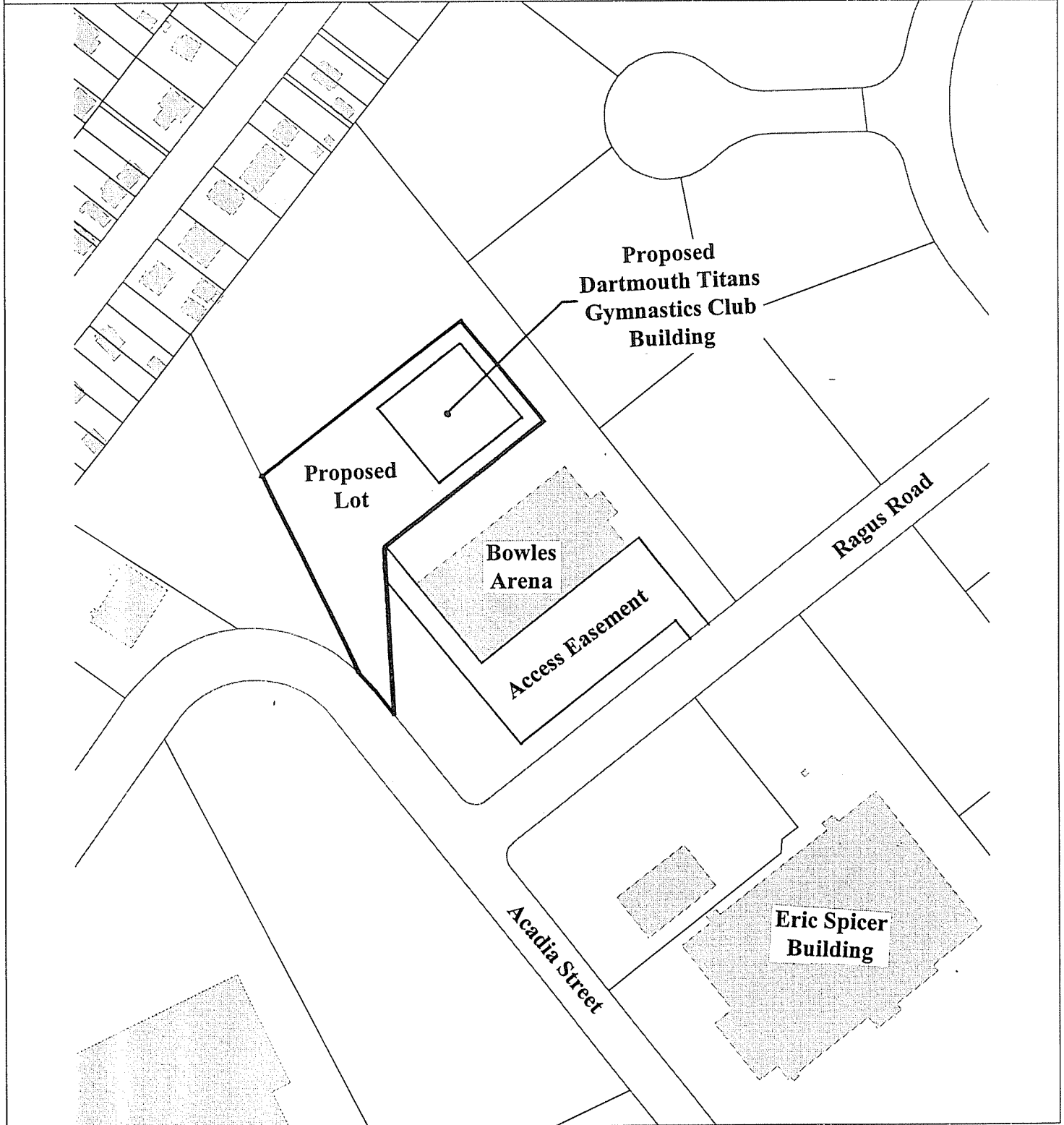
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Scale 1: 1989





LEASE AGREEMENT

BETWEEN

HALIFAX REGIONAL MUNICIPALITY ("MUNICIPALITY")

AND

DARTMOUTH TITANS GYMNASTICS CLUB ("TENANT")

APPROVED
AS TO FORM

Municipal Solicitor

For the Lease of:
A Portion of Lot A-1,
Ragus Road and Acadia Street,
Dartmouth
Halifax Regional Municipality
Nova Scotia, Canada

January 11, 2001

This **LEASE AGREEMENT** dated this ____ day of _____, A.D., 2002.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY
(hereinafter called the "Municipality")

- and -

DARTMOUTH TITANS GYMNASTICS CLUB
(hereinafter called the "Tenant")

Whereas the Municipality is the owner of and responsible for certain lands on Ragus Road and Acadia Street, hereinafter referred to as Lot "A-1";

AND Whereas the Tenant wishes to lease a portion of Lot "A-1" Ragus Road and Acadia Street, as identified on the sketch of the lot attached hereto and marked as **Schedule "A"** which also forms part of this Lease Agreement, hereinafter referred to as the "Property";

AND Whereas the Municipality and Tenant are desirous of recording the terms and conditions of their agreement for the lease of the Property from the Municipality to the Tenant;

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants contained herein and in further consideration of the sum of Ten (\$10.00) Dollars paid by each of the Municipality and the Tenant hereto to the other party, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Tenant hereby agree as follows:

ARTICLE 1.00 DEFINITIONS

1.01 Definitions in this Lease:

- (a) "Article" means an article of this lease.
- (b) "Building" means the Gymnastics Facility to be built by the Tenant on the Leased Lands.
- (c) "Term" means the initial term of this lease as set out in Article 3.01, and any renewal term.
- (d) "Fiscal Year" means the twelve month period between 1 April and 31 March of the following year.
- (e) "Annual Rent" means the amount payable by the Tenant in money, services and access to its Facilities in the Building, in respect of each year of the Term under Article 4.01.
- (f) "Recreation Services" means Parks and Recreation Services of the Halifax Regional Municipality.
- (g) "Leased Lands" means the lands demised to the tenant, situated at 17 Acadia Street, Dartmouth, consisting of approximately 53,175 square feet of land as defined in attached Schedule "A".
- (h) "Lease" means this Lease and all schedules hereby attached, and every properly executed instrument which, by its terms, amends, modifies or supplements this Lease.

ARTICLE 2.00 GRANT OF LEASE

- 2.01 **Grant:** The Municipality, as Owner of the Bowles Arena Site hereby demises and leases the Leased Land to the Tenant, and the Tenant hereby leases and accepts the Leased Land from the Municipality, to have and to hold during the Term, subject to the terms and conditions of this Lease.
- 2.02 **Quiet Enjoyment:** The Tenant shall have quiet enjoyment and possession of the Leased Lands during the Term, subject to the terms and conditions of this Lease.

- 2.03 **Covenants of Municipality and Tenant:** The Municipality covenants to observe and perform all of the terms and conditions to be observed and performed by the Municipality under this Lease. The Tenant covenants to pay the Rent when due under this Lease, and to observe and perform all of the terms and conditions to be observed and performed by the Tenant under this Lease.

ARTICLE 3.00 TERM

- 3.01 **Term:** The initial term of this Lease shall be twenty-five (25) years, commencing on the 1st day of April, 2002.

- 3.02 **Extension of Term:** The Term may be extended in increments of five (5) years, upon the request of the Tenant and at the discretion of the Municipality, subject to satisfactory terms and conditions for the extended term being negotiated between the parties.

- 3.03 **Possible Early Termination:** The Municipality may terminate this Lease at anytime during the twenty-five (25) year term, in the event that the Leased Lands are required for another municipal purpose. The Municipality will advise the Tenant in writing of such possible action as soon as it becomes known, and will give written notice of the termination of this Lease at least twelve (12) months in advance.

In the event of such early termination, the Municipality shall reimburse the Tenant for the lesser amount of either:

- (a) the remaining principal balance of any mortgage or loan obligations that the Tenant may be under with respect to the Building at the termination date,

OR

- (b) the value of the Building at the termination date,

with such reimbursement to be negotiated at the time of termination.

- 3.04 **Termination:** In the event that, at the conclusion of the Term of this Lease, the Municipality shall determine that the Building is to be retained and the Tenant so agrees, the Municipality shall reimburse the Tenant for the value of the Building at the termination date, such reimbursement to be negotiated at the time of termination.

In the event that, at the conclusion of the twenty-five (25) year Term of the Lease, or any extension of that Term, the Municipality shall determine that the Building is not to be retained, the Tenant shall return the Lease Lands to the Municipality with the Building and floor slab entirely removed.

In the event of the early termination of this lease, the Tenant shall be responsible for the removal of the Building, the Municipality shall be responsible for removing the floor slab, if that is necessary, and regrading and re-landscaping the surrounding ground surface to make it safe and reusable.

ARTICLE 4.00 RENT AND OCCUPANCY COSTS

4.01 **Annual Rent:** The Annual Rent shall consist of:

- (a) an annual payment of One Hundred Dollars (\$100.00), payable on the first day of the Term, and on each anniversary of that day.
- (b) the use of the services and facilities in the Building by Recreation Services for two hundred (200) hours per year, free of charge, such hours to occur between 7:00 a.m. and 11:00 p.m. in any day, and the schedule of such hours to be established and mutually agreed upon by the tenant and Recreation Services prior to September 1, 2002, and shall be reviewed annually by the Tenant and Recreation Services.

4.02 **Taxes:** The Tenant shall pay all applicable real estate taxes, business taxes, occupancy taxes, G.S.T. and other similar rates and taxes that may be levied or imposed upon the Leased Land, the Building, or the activities carried on therein, all other rates and taxes that are or may be payable by the Tenant on fixture, equipment or machinery on the Leased Land, or in the Building, and all taxes that may be levied upon building materials and construction work required for the construction of the Building.

ARTICLE 5.00 TENANT'S COVENANTS

5.01 **Rent:** The Tenant shall pay the rent hereby reserved promptly and when due, and provide the services and facilities in Article 4.01(b) on the times and dates agreed.

- 5.02 **Use:** The Leased Lands shall be occupied and used by the Tenant for building thereon a Gymnastics Facility ("the Building") including a gymnasium, changing facilities, washrooms, administrative offices, storage space and ancillary accommodation, to be used for gymnastics and related recreational activities.
- 5.03 **Design:** The Building shall be designed by an architect registered in the Province of Nova Scotia, appointed and paid by the Tenant.
- The balance of the Leased Lands not covered by the Building shall be landscaped according to a design prepared by a landscape architect registered in the Province of Nova Scotia, appointed and paid by the Tenant, and the design and materials shall be approved by Parks and Recreation Services, such approval not to be unreasonably withheld.
- 5.04 **Building:** The cost of constructing the Building, and the landscaping of the balance of the Lease Lands, shall be entirely at the Tenant's expense.
- 5.05 **Completion:** The construction of the Building and adjoining landscaping shall be entirely completed not more than twenty-four (24) months after the commencement date of this lease. In the event that the work is not completed within the said twenty-four (24) month period, then this Lease shall be null and void. The Tenant shall obtain an Occupancy Permit prior to occupying the facility, otherwise this Lease shall be null and void.
- 5.06 **Maintenance:** The Tenant shall clean, maintain and operate the Building entirely at its own expense, pay all the costs of water, electricity, heat and telephone services, as well as carry out the regular repair and maintenance of the Building, including the regular and timely disposal of garbage and waste and the upkeep of the grounds and landscaping of the balance of the Lease Lands.
- 5.07 **Nuisance:** The Tenant shall not suffer or permit any waste upon the Leased Lands and not cause or permit any nuisance in, at or on the Leased Lands or any part of the Building.
- 5.08 **Alterations:** The Tenant shall not make any alterations to the Building or the landscaping of the Leased Lands, without first having submitted a plan of same to the Municipality and having obtained the Municipality's prior written approval, which shall not be unreasonably withheld.
- 5.09 **Assignments:** The Tenant shall not assign this Lease or sublet all or any part of the Leased Lands or Building without prior written consent of the Municipality,

such consent not to be unreasonably withheld, and if granted, shall in no way release or discharge the Tenant from the full performance of its part of this Lease unless otherwise agreed to in writing and the payment of all rents and other payments and observance of all covenants, agreements, terms and conditions herein contained. Any such consent granted by the Municipality shall not be deemed or implied as a consent to any further or subsequent assignment or subletting. In the event this Lease is assigned or all or a portion of the Lease Lands or Building sublet, the Tenant shall pay all expenses involved in any such assignment or subletting, including the Municipality's legal costs in connection therewith.

- 5.10 **Compliance with Insurance:** The Tenant shall comply with all fire prevention regulations and not do or permit to be done or have or permit upon the Leased Lands or Building anything which will in any way impair or invalidate the obligations of any insurer under any policy of insurance effected on the Leased Land or Building or which would increase the premium for such insurance.
- 5.11 **Compliance with Laws:** The Leased Lands and Building shall be used and occupied in a safe, careful and proper manner so as to abide by and comply with all lawful rules, regulations and bylaws of every lawful authority which in any way affect the Building or the Leased Lands.
- 5.12 **Signs:** Any exterior signage shall comply with the provisions of the land use by-law and the Signs Ordinance and any other applicable laws of the Halifax Regional Municipality. It shall be the responsibility of the tenant to obtain appropriate approvals and permits.
- 5.13 **Tenant's Insurance:** During the Term, the Tenant shall maintain at its own expense:
- (a) Fire insurance with extended coverage and water damage insurance in amounts sufficient to fully cover the Building and all property therein, and
 - (b) Liability insurance, with the Municipality named as an additional insured, against claims for death, personal injury and property damage in or about the Leased Land and Building, in amounts which are from time to time acceptable to a prudent tenant in the community in which the Building is located, but not less than Two Million Dollars (\$2,000,000) for death or injury, and Two Million Dollars (\$2,000,000) for property damage, in respect of each occurrence.

Policies for such insurance shall be in a form and with an insurer reasonably acceptable to the Municipality, shall require at least fifteen (15) days' written notice to the Municipality of termination or material alteration during the Term, and shall waive any right of subrogations

against the Municipality. The Tenant shall deliver to the Municipality certified copies or other evidence of such policies, prior to the first day of the Term in the case of liability insurance and prior to obtaining an Occupancy Permit in the case of fire insurance, and shall provide written evidence of the continuation of such policies not less than ten (10) days prior to their respective expiry dates.

- 5.14 **Mechanics' Liens:** The Tenant shall indemnify and save harmless the Municipality against claims arising from Mechanics; or other liens for any work done or materials provided or services rendered for construction, of, or improvements or alterations made by the Tenant to the Building, or improvements to the Leased Lands.
- 5.15 **Taxes:** The Tenant shall pay as and when they fall due, all taxes and rates charged by any governmental authority in connection with the occupancy of the Building and Leased Lands or assessed or levied by any governmental authority in respect of any business or other activity carried on therein.

ARTICLE 6.00 MUNICIPALITY'S COVENANTS

- 6.01 **Quiet Enjoyment:** The Tenant shall have quiet enjoyment of the Leased Lands during the term hereby demised.
- 6.02 **Vehicle Access and Parking:** The Municipality shall provide an access easement to the Leased Lands, as shown on Schedule "A". It will be the responsibility of the tenant to construct and maintain any parking at its complete expense within the confines of the leased lands.

The Municipality shall **only maintain** the said access easement and parking area currently in use for the Bowles Arena and shall keep same in good and safe condition at all times, and, in winter, shall keep these areas reasonably clear of snow and ice.

ARTICLE 7.00 RESPONSIBILITY FOR DAMAGE

- 7.01 **Tenant's Liability to Municipality:** The Tenant shall indemnify and save harmless the Municipality from and against all liability, claims, damages, or expense due to or arising out of any act or neglect of the Tenant, its employees, agents, invitees or licensees in or about the Building and Leased Lands, or due to or arising out of any breach by the Tenant of any provision of this Lease, and including liability for injury or damage to the personal property of the Tenant's employees, agents, invitees, or licensees.

ARTICLE 8.00 DEFAULT

- 8.01 **Default and Repossession:** If and whenever the rent hereby reserved, or any part thereof, shall be unpaid for thirty (30) days after any of which the same ought to have been paid and a formal demand shall have been made therefor giving the Tenant twenty (20) business days to bring the rent into good standing, or in case of a material breach or nonperformance of any of the covenants, agreements, rules and regulations herein contained on the part of the Tenant to be kept, observed or performed, or in case of the seizure or forfeiture of the Term for any of the causes in this Lease mentioned, then the Municipality may at any time thereafter enter into and upon the Demised Premises or any part thereof and repossess and retake, as of its former estate, anything herein contained to the contrary notwithstanding, and no acceptance of rent subsequent to any breach or default other than non-payment of rents and no condoning, excluding or overlooking by the Municipality on previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this condition, nor in any way to defeat or affect the rights of the Municipality hereunder. This proviso shall extend and apply to all covenants herein whether positive or negative.
- 8.02 **Events Authorizing Repossession:** The Municipality may, upon the occurrence of any one or more of the following events, enter into and take possession of the Leased Lands:
- (a) that the Leased Lands or Building be used by any other person other than the Tenant without the prior written consent of the Municipality, which consent shall not be unreasonable withheld;
 - (b) that the Leased Land or Building be used for any other purpose other than that for which the same was leased;
 - (c) that the Building is not properly maintained, that necessary refurbishments are not carried out, or that the Building is being operated in a manner that is contrary to the public interest;
 - (d) that the Term or any of the goods and chattels of the Municipality at any time are seized or an execution order attachment made by any creditor of the Tenant;
 - (e) that the Tenant makes an assignment for the benefit of creditors;
 - (f) that the Tenant becomes bankrupt or insolvent or take the benefit of any legislation now or hereinafter in force for bankruptcy or insolvent debtors;
 - (g) that any order be made for winding up the Tenant;

- (h) that a receiver be appointed by private or judicial means, respecting the Tenants property;
- (i) that an order be issued terminating the corporate existence of the Tenant.

Then, in any such case, this Lease shall, at the option of the Municipality, cease and the Term shall immediately become forfeited and void, and the Municipality may re-enter and take possession of the Leased Land and Building. If the Municipality shall re-enter or if this Lease shall become forfeited as aforesaid, the Municipality may thereupon re-let the Demised Premises but the Tenant shall remain liable to the Municipality for any and all loss of rent and expenses occasioned by reason of such re-letting.

- 8.03 **Non-Waiver of Default:** The waiver or acquiescence of the Municipality of any default by the Tenant under any clause of this Lease or the regulations shall not be deemed to be a waiver of such clause or any subsequent or other default thereunder.

ARTICLE 9.00 ARBITRATION

- 9.01 Any difference or dispute between the parties hereto concerning the interpretation of any provision of this Lease or concerning any matter or thing done or omitted to be done hereunder by the parties hereto, shall be referred to an Arbitrator appointed in accordance with Article 9.02.

- 9.02 Either party may notify the other party in writing of its desire to refer such difference or dispute to an Arbitrator. The Municipality and the Tenant shall jointly agree upon an Arbitrator within ten (10) days (excluding Saturday, Sunday or any holiday) of the receipt of such notice. The award of this arbitrator shall be conclusive and binding upon both parties. The expense of the arbitration shall be borne equally by the parties, and subject to the provisions hereof, the provisions of the Arbitration Act of the Province of Nova Scotia.

- 9.03 No person shall be appointed Arbitrator who:

- (a) is acting or has within the period of twelve (12) months prior to the date of his appointed, acted in the capacity of solicitor, legal advisor, counsel or paid agent of either of the parties' or
- (b) has any pecuniary interest in the matters referred to him.

ARTICLE 10.00 MISCELLANEOUS

- 10.01 **Entire Agreement:** This Lease and Schedules hereto constitute the entire agreement between the Municipality and the Tenant and neither party is bound by any representation, warranty, promise, agreement or inducement not embodied herein.
- 10.02 **Notices:** Any notice from one party to the other hereunder shall be in writing and shall be deemed duly served, if delivered personally by Municipality's representative or by reputable courier, or if mailed by registered or certified mail addressed to Tenant at the Building (whether or not Tenant has departed from, vacated or abandoned the same) or to Municipality at the place from time to time established for the payment of Rent. Any notice shall be deemed to have been given at the time of personal delivery or courier, or if mailed, three days after the date of mailing thereof.

Municipality

Manager, Real Estate
Real Property Services
Halifax Regional Municipality
5251 Duke Street, 4th Floor
PO Box 1749
Halifax, NS B3J 3A5
Phone: (902)490-6025
Fax: (902)490-6030

Tenant

President, Dartmouth Titans Gymnastics Club
Dartmouth, Nova Scotia

Either party shall have the right to designate by notice, in the manner above set forth, a different address to which notices are to be mailed.

IN WITNESS WHEREOF the parties hereto have executed this indenture by affixing their corporate seals by their authorized officers in that behalf.

SIGNED, SEALED AND DELIVERED
in the presence:

Witness

Witness

Witness

Witness

) **DARTMOUTH TITANS GYMNASTICS CLUB**

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HALIFAX REGIONAL MUNICIPALITY

Mayor

Municipal Clerk

PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY

I CERTIFY that on this _____ day of
January, A.D., 2002, Titans Gymnastics Club, one of the parties mentioned in the foregoing and
annexed Indenture, signed and executed the said Indenture in my presence and I have signed as a
witness to such execution.

A BARRISTER OF THE SUPREME COURT
OF NOVA SCOTIA