



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 157-95


To authorize the execution of
an agreement with Arena Pro
Consultants Ltd.

The Council of The Corporation of the City of Brampton
ENACTS AS FOLLOWS:

1. The Mayor and Clerk are hereby authorized to execute an agreement, in a form approved by the City Solicitor, between The Corporation of the City of Brampton and Arena Pro Consultants Ltd. respecting the ice rental of two of the ice rinks to be constructed as part of the Recreational Facilities Project at the northeast corner of McLaughlin Road South and Ray lawson Boulevard.

READ a FIRST, SECOND and THIRD TIME and PASSED in Open Council this 12th day of July, 1995.


PETER ROBERTSON MAYOR


KATHRYN ZAMMIT DEPUTY CLERK

APPROVED
AS TO FORM
LAW DEPT.
BRAMPTON

WCC

DATE 12/07/95

THIS AGREEMENT dated the

18th day of July, 1995.

BETWEEN:

THE CORPORATION OF THE CITY OF BRAMPTON
hereinafter called "the City"
OF THE FIRST PART

AND

ARENA PRO CONSULTANTS LTD.
hereinafter called "Arena Pro"
OF THE SECOND PART

WHEREAS the City and Arena Pro desire in good faith to work together in the development and promotion of the Project described herein;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto AGREE AS FOLLOWS;

DEFINITIONS

1. In this Agreement:

- (1) "Adult Rinks" means the two more north easterly ice rinks forming part of the Project designated as Adult Rinks on the concept plan attached as Schedule A to this Agreement.
- (2) "Community Rinks" means the two more south westerly ice rinks forming part of the Project designated as Community Rinks on the concept plan attached as Schedule A to this Agreement;
- (3) "Non-prime Ice Time" means the programming of ice time at times other than Prime Ice Time as defined in this Agreement;
- (4) "Prime Ice Time" means the programming of ice time between the hours of 4:00p.m. and 12:00 midnight Mondays through Fridays and between 6:00a.m. and 11:00p.m. Saturdays and Sundays of each week during the term of this Agreement and any renewals thereof;
- (5) "Program" means the right to rent ice, organize and run adult hockey leagues and tournaments, arrange for all necessary referees and league and tournament officials and to charge a fee therefore, and "Programming" shall have a corresponding meaning.
- (6) "Project" means a recreation centre, including pool, fitness centre and meeting rooms, and a four ice rink complex and associated parking to be constructed by the City at the northeast corner of McLaughlin Road South and Ray Lawson Boulevard, as shown on the concept plan attached as Schedule A to this Agreement.

TERM

2. This Agreement shall be for a term of ten (10) years commencing on the date of occupancy of the Adult Rinks by Arena Pro.

CONSTRUCTION OF PROJECT

3. The City shall, at its expense, construct the Project in a good and workmanlike manner with a targetted sod turning date of September 1, 1995. The Project will be owned by the City.

DESIGN OF PROJECT

4. The City shall approve the final design of the Project. Arena Pro shall sit as a member of the architectural design team to provide advice and information relating to the design of the Project. It is the intention of the Parties that the ice surfaces are to be 80' X 180' and that the program office and pro shop shall be together and shall not total less than 820 sq.ft.

ADDITIONAL FACILITIES WITHIN THE PROJECT

5. The Project shall be designed to include a snack bar, a server, food and beverage vending machine area(s), pro shop for the exclusive sale of hockey equipment and related products, arcade area and, subject to any required approvals, space for a lounge licensed pursuant to the provisions of the L.L.B.O., which shall be the subject of a separate agreement with the chosen operator.

NAMING OF ADULT RINKS

6. The City shall consult Arena Pro before approving a name for the Adult Rinks. The parties recognize that a name must be chosen which will give the Adult Rinks a separate identity distinct from the rest of the Project.

MAINTENANCE AND REPAIR

7. The City shall, at all times throughout the term, maintain, clean and repair, or cause to be maintained and repaired, as would a prudent owner of a reasonably similar recreational facility, the Project. The City shall also be responsible for snow removal from the parking lot. The City shall give Arena Pro thirty (30) days notice of any scheduled maintenance or repair, except for emergency maintenance and repair. For emergency maintenance and repair, the City shall give Arena Pro such notice as is reasonable in the circumstances.

PAYMENTS

- 8.(1) In consideration of the rights granted under this agreement, Arena Pro shall pay to the City throughout the term or any renewal thereof a base payment of \$850,000* per year in 25 bi-weekly instalments as described in Schedule "B" each payable every other Monday commencing on the 2nd day of September, 1996.
- (2) Arena Pro further agrees to pay to the City additional payments calculated as follows:
 - (i) For each two week period commencing the 2nd day of September, 1996, a calculation of the number of hours of Prime Ice Time and Non-prime Ice Time programmed by Arena Pro on the Adult Rinks shall be made and submitted to the City with each instalment of the base payment.
 - (ii) The Value of the programmed ice time shall be calculated as follows:

Hours of Prime Ice Time programmed X \$135.00 per hour + Hours of Non-Prime Ice Time programmed X \$95.00 per hour = value of the programmed ice time. The \$135.00 and \$95.00 rates and the \$850,000 base payment shall be adjusted to reflect any changes in City ice rates for adult use as approved by City Council at any time during the term of this agreement or any renewal thereof.

Then the resulting additional payment to be made with each instalment of the base payment shall be the amount by which the value of programmed ice time for the previous two week period exceeds the bi-weekly instalment.

- (3) If a payment is due on a statutory holiday, it shall be made on the next business day. Payments shall be by cheque payable to The Corporation of the City of Brampton and shall be delivered to the City's facility manager for the Project.
- (4) Arena Pro grants to the City the right during all reasonable hours to inspect its business records for the purpose of confirming the hours of programmed ice time.

OPERATING RIGHTS

- 9.(1) In consideration of the payments made under paragraph 8, Arena Pro shall have the right throughout the term of this agreement and any renewal thereof:
 - (i) to Program ice time or floor time, in the event that ice is not required for a given summer programme for the Adult Rinks;
 - (ii) to operate the pro shop; and
 - (iii) to operate the arcade area.
- (2) Arena Pro agrees to have Programming personnel at the Adult Rinks for all Prime Ice Time functions and for all league and tournament functions.
- (3) Arena Pro and City will approve in advance all games to be located in the arcade area.
- (4) Arena Pro shall be provided with keys to the pro shop, arcade area and a program office.
- (5) Arena Pro shall have the right to install fixtures in the pro shop and arcade areas, subject to the right of the City to approve any installations to these areas in advance. Arena Pro shall have the right to remove its fixtures provided it repairs at its expense any damage caused by the removal of the fixtures.

CONCESSIONS

- 10. The City shall have the exclusive rights to operate the snack bar, servery and to locate food and beverage vending machines in the Project.

ADVERTISING

- 11.(1) The City shall have the exclusive rights to place or cause to be placed, scoreboard advertising in and arena

board advertising on the boards of the Adult Rinks and the Community Rinks.

- (2) Arena Pro shall have the exclusive rights to place or cause to be placed, advertising in the pro shop, subject to the right of the City to approve all advertisements in advance, such approval not to be unreasonably withheld. The City may, in its absolute discretion, refuse to allow advertisements which are of a religious, political or immoral nature, or which would not be in accordance with the regulations and standards set by the Canadian Advertising Council.
- (3) The City shall make reasonable efforts, consistent with its approved budget for marketing the Project, to assist Arena Pro in marketing the Adult Rinks.

TOURNAMENTS

- 12.(1) The City shall have the right during each year of this agreement, or any renewal thereof, to book the Adult Rinks for up to six (6) consecutive calendar days between Christmas and New Years and one Thursday to Sunday hockey tournament over the Easter weekend. The City shall pay Arena Pro's prevailing rate for the ice time.
- (2) Arena Pro shall have the right during each year of this agreement, or any renewal thereof, to book the Community Rinks for one weekend hockey tournament between October 1 and December 24, one hockey tournament between January 1 and April 15 and as many as it may require between April 15 and September 30. Arena Pro shall pay to the City its prevailing rate for ice time and shall Program the tournaments.

CONSULTATION

13. Arena Pro and the City agree to consult with each other on an ongoing basis so as not to duplicate services and in order to avoid conflicting tournament dates and to co-ordinate the marketing and scheduling of programmes in good faith at the end of each season.

RULES AND REGULATIONS

- 14.(1) The City shall have the right to make and post rules and regulations governing the conduct of persons within the Project, including the Adult Rinks.
- (2) Arena Pro shall, in all ice rental agreements for ice time in the Adult Rinks, incorporate with necessary modifications the terms and conditions in the City's standard facility permit, to the satisfaction of the City.
- (3) Arena Pro shall comply with the policies of the City's Municipal Alcohol Program.

LIABILITY INSURANCE & INDEMNITY

- 15.(1) Arena Pro shall obtain insurance for public liability and property damage in an amount of at least Two Million Dollars (\$2,000,000.00) third party liability for each occurrence, naming the City as an additional named insured. Arena Pro shall provide to the City a certificate of insurance on the City's form evidencing this insurance. Arena Pro will ensure that this coverage

is maintained throughout the term of this Agreement and any renewal thereof and shall provide renewal certificates on expiry.

- (2) Arena Pro shall be responsible for all other insurance in relation to theft, damage and fire for all equipment, furniture, fixtures and personal property of Arena Pro located in the Project.
- (3) Arena Pro hereby indemnifies and saves harmless the City, its Council and all its employees and servants from and against all claims, demands, actions and proceedings, by whomsoever made or brought, in respect of any costs, expenses, loss, damage or injury, including death arising by reason of or in connection with the operation of the pro shop and arcade, and hereby releases and forever discharges the parties aforesaid from and against all claims or demands whatsoever which it, its successors or assigns, can, shall or may have by reason aforesaid against any or all of the said bodies and persons.

FIRE

16. If during the term of this agreement or any renewal thereof, the Project or the part of the Project containing the Adult Rinks shall be destroyed or damaged by fire or the elements then the following provisions shall apply:
 - (1) If the Adult Rinks, pro shop and arcade, shall be so badly injured as to be unfit for occupancy, and as to be incapable of being repaired with reasonable diligence within 365 days of the happening of such injury, then this agreement shall cease and be at an end to all intents and purposes from the date of such damage or destruction and payments made shall be apportioned from said date.
 - (2) If the Adult Rinks, pro shop and arcade, shall be capable, with reasonable diligence, of being repaired and rendered fit for occupancy within 365 days from the happening of such injury as aforesaid but the Adult Rinks, pro shop and arcade have been rendered wholly unfit for occupancy, then the payments required by this Agreement shall not be made after such injury or while the process of repair is going on, and the City shall effect the required repairs with all reasonable speed, and the payments shall recommence immediately after such repairs are completed.
 - (3) If the Adult Rinks, pro shop and arcade, shall be repaired within 365 days as aforesaid, and if the damage is such that only one of the Adult Rinks can be used, then until such damage shall have been repaired, the payments required by this agreement shall abate proportionately.

NO ABATEMENT OF PAYMENTS

17. There shall be no abatement from or reduction of any payments due hereunder, nor shall Arena Pro be entitled to damages, losses, costs or disbursements from the City during the term of this Agreement or any renewal thereof, caused by or on account of fire (except as above), water, sprinkler systems, partial or temporary failure or stoppage of heat, light, live steam, ice-making plant and equipment or plumbing service in or to the Adult Rinks, repairs, renewals and improvements to the Adult Rink or to the equipment or systems supplying the said services, or from any cause whatsoever, provided that the said failure or stoppage be remedied within a reasonable time.

FORCE MAJEURE

18. Notwithstanding anything to the contrary contained in this Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of: strikes; labour troubles; inability to procure materials or services; power failure; governmental laws, regulations or controls; riots; civil commotion; insurrection; sabotage; invasion; rebellion; military or usurped power; war or warlike operations; act of God; or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (collectively, "Force Majeure") then performance of such term, covenant or act shall be excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time-period after the expiration of the period of such delay. The provisions of this paragraph shall not operate to excuse Arena Pro from the base payments and additional payments in the amounts and at the times specified in this Agreement, except where the event or events described herein result in the Adult Rinks being rendered inaccessible or unfit for occupancy.

DEFAULT AND TERMINATION

19. Despite anything contained in any present or future laws, statutory or otherwise, to the contrary, if and whenever during the terms hereof:
- (1) Arena Pro fails to make any payment on the date or dates appointed for such payment (provided the City first gives two (2) days written notice to Arena Pro of any such failure, but no such notice shall be required if Arena Pro defaults more than twice in the making of any payment, even though such defaults may each have been timely cured, but whether such notice is required to be given or not, Arena Pro agrees that the payments are due and payable by Arena Pro under this Agreement on their due dates; or
 - (2) Arena Pro fails to observe or perform any of the other terms, covenants or conditions of this Agreement to be observed or performed by Arena Pro, provided the City first gives Arena Pro seven (7) days written notice of any such failure to perform, and Arena Pro within such period of seven (7) days fails to commence diligently and thereafter to proceed diligently and continuously to cure any such failure to perform; or
 - (3) Arena Pro becomes bankrupt or insolvent or takes the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes an assignment for the benefit of creditors or any arrangement or compromise, or
 - (4) a receiver, interim receiver, receiver and manager, custodian or liquidator is appointed for the business, property, affairs or events of Arena Pro, then and in every such case this Agreement shall be terminated and Arena Pro agrees that the City may expel all persons and remove all property from the Adult Rinks, pro shop and arcade and that such property may, at the City's option, be removed and sold or disposed of by the City by public auction or otherwise, and either in bulk or by individual item, all as the City in its sole discretion may decide, and Arena Pro agrees that the proceeds of such sale or disposition shall be applied by the City in payment of any indebtedness due hereunder from Arena Pro to the

City, in so far as applicable, or may be stored in a public warehouse or elsewhere at the cost and for the account of Arena Pro, all without service of notice by the City to Arena Pro or resort by the City to legal process and without the City becoming liable or responsible for any injury or loss which may be occasioned thereby, or for any claim for damages. The City may, but is not obliged to, honour any ice rental agreements which Arena Pro may have already entered into for any time following the date this agreement is terminated and in the event that the City does decide to honour any such agreements, Arena Pro is hereby deemed to have assigned the benefit of such agreements to the City and shall pay over to the City any deposit monies paid to Arena Pro in respect of such agreements. Arena Pro irrevocably waives the benefit of any present or future laws, statutory or otherwise, which in any way may take away, limit or diminish the City's right to terminate this Agreement in accordance with the terms of this paragraph.

LIQUIDATED DAMAGES

20. If this Agreement is terminated under paragraph 19 because of the default of Arena Pro, then Arena Pro shall pay to the City, in addition to any payments or additional payments owing, as liquidated damages and not as a penalty:

- (1) the sum of \$136,000, if the default occurs at any time during the first year of the term;
- (2) the sum of \$68,000, if the default occurs at any time during the second year of the term; or
- (3) the sum of \$34,000, if the default occurs at any time following the conclusion of the second year of the term.

The payment of liquidated damages shall be secured by an irrevocable letter of credit in the amount of \$34,000 in favour of the City, in a form satisfactory to the City Treasurer, to be posted by Arena Pro at the commencement of the term.

WAIVER

21. A waiver by the City of any breach of any of Arena Pro's covenants hereunder shall not affect or prejudice the rights of the City in respect of any future or other breach of covenant by Arena Pro.

ASSIGNMENT

22. Arena Pro shall not assign or grant a security interest in this Agreement without the prior written consent of the City.

NOTICES

23. Any notice, demand, request or other communication (collectively "Notice") which may be or is required to be given under this Agreement shall be in writing and delivered personally or sent by registered mail, postage prepaid, and shall be addressed

- (1) if to the City, at 2 Wellington St. W., Brampton, ON L6Y 4R2 Attention: Director, Facilities and Programme Services, Parks and Recreation, with a copy to such other person at any other address as the City designates by written notice, and
- (2) if to Arena Pro, at the Adult Rinks.

Any such Notice shall be conclusively deemed to have been given or made on the day on which such Notice is delivered, or if mailed, then 72 hours following the date of mailing, as the case may be, and the time-period referred to in the Notice commences to run from the time of delivery or 72 hours following the date of mailing. Either party may at any time give notice in writing to the other of any change in address of the party giving such notice and, from and after the giving of such notice, the address therein specified shall be deemed to be the address of such party for the giving of notices hereunder. If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any Notice shall only be delivered personally.

RENEWAL

24. This Agreement may be renewed upon the mutual consent of the City and Arena Pro for an additional term of ten (10) years. Negotiations for a renewal shall commence at least eighteen (18) months prior to the expiration of the term.

NO LANDLORD-TENANT RELATIONSHIP

25. The City and Arena Pro agree that this Agreement does not, nor was it intended to, create a Landlord-Tenant relationship between them.

WARRANTY

26. It is a condition of this Agreement, and Arena Pro warrants, that the Mississauga Men's Hockey League will relocate to and operate out of the Adult Rinks for the term of this Agreement and any renewal thereof, in accordance with the letter attached as Schedule B to this Agreement.

ARBITRATION

27. In the case of any dispute between the City and Arena Pro during the term of this Agreement and any renewal, as to any matter arising hereunder, either party hereto shall be entitled to give to the other party notice of such dispute and demand arbitration thereof, and, after giving notice and demand the parties shall have ten (10) days to agree upon the appointment of a single arbitrator. If the parties cannot agree, then each party shall at once appoint an arbitrator and such appointees shall jointly appoint a third. The decision of any two of the three arbitrators so appointed shall be final and binding upon the parties. The parties agree that the costs of the arbitration shall be equally apportioned between them regardless of the outcome of the arbitration. Each party shall be responsible for its own counsel fee. The provisions of the Arbitrations Act, R.S.O. 1990, c.A.24 as amended shall apply to the arbitration, except where they are inconsistent with the provisions of this paragraph.

HEADINGS

28. The headings introducing paragraphs and clauses of this Agreement are inserted for convenience of reference only and in no way define, limit, construe or describe the scope or intent of such sections or articles.

ENTIRE AGREEMENT

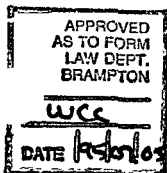
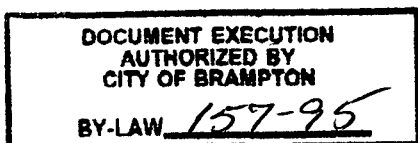
29. This Agreement and the amendments, addenda and schedules attached hereto, if any, form a part of this Agreement and set forth all the covenants, promises, assurances, agreements, representations, conditions, warranties, statements and understandings (collectively "Representations") between the City and Arena Pro concerning the Project and the Adult Rinks, pro shop and arcade, and there are no Representations, either oral or written, between them other than those in this Agreement. This Agreement supersedes and revokes all previous negotiations, arrangements, letters of intent, Representations and information conveyed, whether oral or in writing, between the parties hereto or their respective representatives or any other person purporting to represent the City or Arena Pro. Arena Pro agrees that (1) it has not been induced to enter into this Agreement by any Representations not set forth in this Agreement, (2) it has not relied on any such Representations, (3) no such Representations shall be used in the interpretation or construction of this agreement, and (4) the City shall have no liability for any consequences or claims arising as a result of, or from, any such Representations. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City and Arena Pro unless in writing and signed by each of them.

AGREEMENT BINDING


30. This Agreement is binding upon the parties and their respective heirs, executors, successors and assigns.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals attested by the hands of their proper officers duly authorized in that behalf.


THE CORPORATION OF THE CITY
OF BRAMPTON



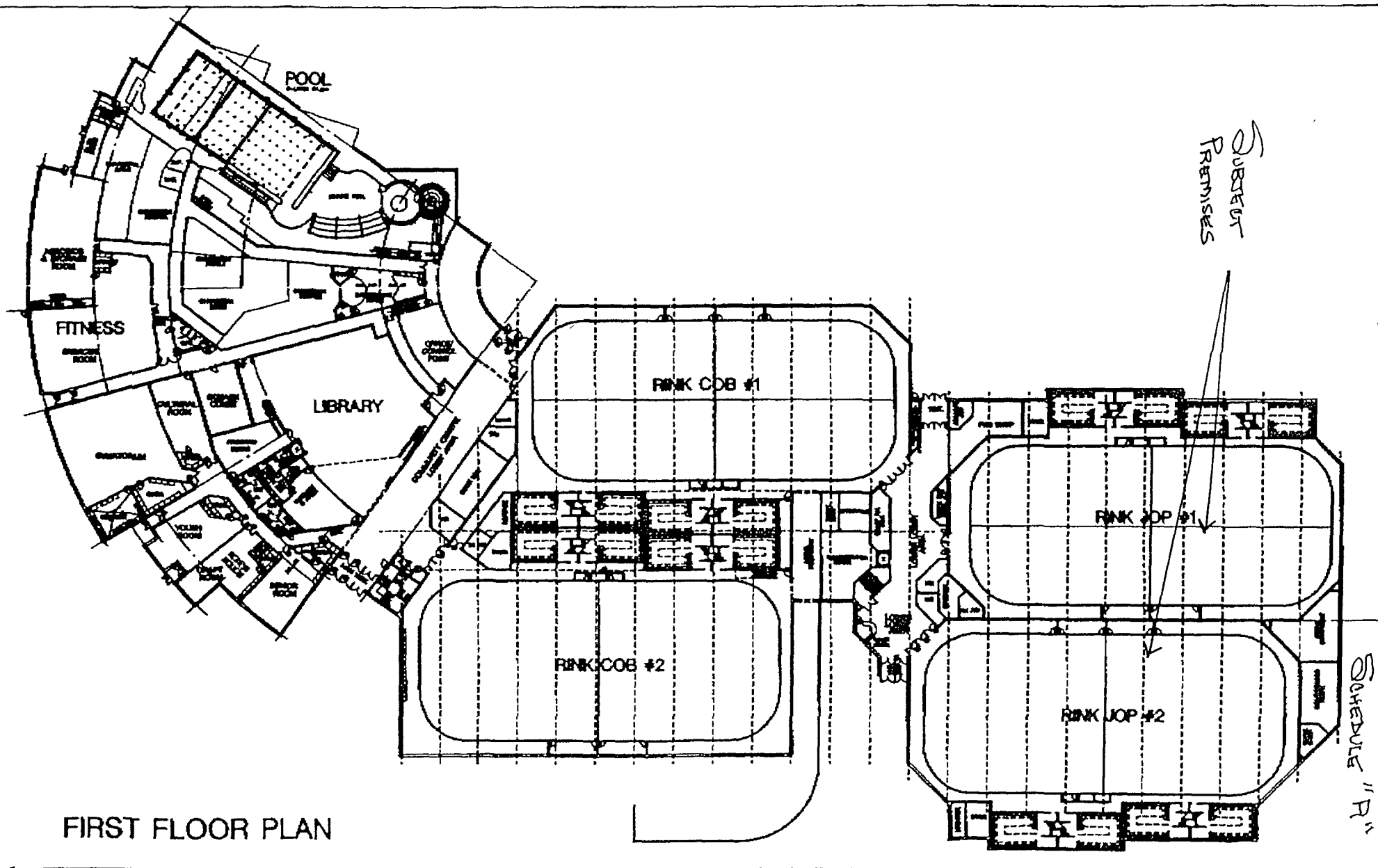

PETER ROBERTSON MAYOR


LEONARD J. MIKULICH CLERK
K. ZADWIT DEPUTY

ARENA PRO CONSULTANTS LTD.


JON GRAWSKY
I HAVE AUTHORITY TO
BIND THE CORPORATION

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SCHEDULE "B"

BASE PAYMENT INSTALMENT SCHEDULE (as per Clause 8(1))

YEAR 1

INSTALMENT #	1	\$ 34,000	14	\$ 30,000
	2	34,000	15	30,000
	3	34,000	16	30,000
	4	118,000**	17	30,000
	5	30,000	18	30,000
	6	30,000	19	30,000
	7	30,000	20	30,000
	8	30,000	21	30,000
	9	30,000	22	30,000
	10	30,000	23	30,000
	11	30,000	24	30,000
	12	30,000	25	30,000
	13	30,000		

\$850,000*

- * It is understood that the base payment amount will be adjusted on a yearly basis, as described in Clause 8(2)(ii).
- ** The "balloon payment" will always be made with Instalment # 4 of each payment instalment schedule year.

Schedule "B" will be mutually reviewed and revised (if necessary) every March, prior to the commencement of the next year's instalment schedule (which commences the first Saturday in September unless otherwise mutually agreed upon).