



OC

The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 89-2000

**BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO A LEASE
AGREEMENT WITH FAMILY SPORTS LIMITED FOR
PRO/SPORTS SHOP AT LEISUREPLEX
(L07.68.04.07)**

WHEREAS Section 191(1) of the *Municipal Act*, R.S.O. 1990, Chapter M.45 provides that the council of every corporation may pass by-laws for acquiring or expropriating any land required for the purpose of the corporation and for erecting and repairing buildings thereon, and for making additions to or alterations of such buildings and may sell or otherwise dispose of the same when no longer so required, and

WHEREAS Section 191(2) of the said Act provides that without limiting the generality of this section, in subsection (1) "otherwise dispose of" shall be deemed to include and to have always included a lease, and

WHEREAS the current lease for the Pro/Sports Shop at the Leisureplex will expire soon and the leasee indicated that it did not wish to renew the lease, and

WHEREAS requests for proposals for the leasing of the Pro/Sports Shop in the Leisureplex were invited, and

WHEREAS at the Council-in-Committee meeting of April 17, 2000 Report No. PALS-07-2000 was approved authorizing the entry into a three year lease agreement with Family Sports Limited for the operation of the Pro/Sports Shop located in the Leisureplex at \$12.00 per square foot, and further that staff negotiate with Family Sports Limited for common area charges as well as an option to renew, and

WHEREAS the terms and conditions of the lease agreement have been settled and agreed upon in the form of Schedule "A" annexed hereto to this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

- (1) **THAT** the entry into a lease agreement with Family Sports Limited for the Pro/Sports Shop at the Leisureplex in the form as Schedule "A" annexed hereto to this by-law be and it is hereby authorized and approved.

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- (2) THAT the Mayor and the Clerk be and they are hereby authorized and directed to execute the lease agreement annexed hereto as Schedule "A" to this by-law and to affix the corporate seal thereto.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25TH
DAY OF APRIL, 2000.



MAYOR

CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 89-2000 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2000.

THIS LEASE AGREEMENT made in triplicate this day of , 2000.

BETWEEN

Family Sports Limited
(hereinafter referred to as "Operator")

AND

THE CORPORATION OF THE TOWN OF FORT ERIE
(hereinafter referred to as the "Town")

WHEREAS the Town is the owner of a recreational facility known as the Fort Erie Leisureplex, and

WHEREAS the pro/sport shop services area at the Leisureplex is available for leasing, and

WHEREAS in response to a request for proposal, it is deemed desirable to enter into an agreement for the provision of pro/sports shop services at the Leisureplex, with the Operator, and

WHEREAS the Operator has hereby agreed to enter into an Agreement for the provision of pro/sports shop services at the Leisureplex in the Town of Fort Erie;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and other terms and conditions hereinafter contained and sufficient consideration having been given one to the other, the parties hereby covenant and agree as follows:

1. **Purpose of Agreement**

The Town hereby grants to the Operator a lease to manage and operate a pro/sports shop in the Leisureplex at the Fort Erie Municipal Centre (hereinafter referred to as the "Leisureplex"). The Operator hereby agrees to provide high quality products and service including skate sharpening, tape, laces and hockey sticks.

2. Term

The term of this agreement is for three (3) years commencing July 1st, 2000. The Operator shall have the option to extend the term of this agreement for an additional term of up to five (5) years upon giving notice in writing to the Town at least six (6) months prior to the expiration of the term. In the event of the exercise of this option, such renewal shall be upon the same terms and conditions as this agreement, save and except for the lease fees, common charges and utility costs both parties agreeing to negotiate in good faith. If the parties are unable to agree on the lease fees and common area charges, for a renewal term, then the Operator or the Town shall be entitled to revoke its notice to renew.

3. Pro/Sport Shop Premises

The Pro/Sport Shop Premises under the exclusive use of the Operator shall comprise approximately 1,080 square feet of space (830 square feet main floor, 250 square feet mezzanine) as set out in heavy black on Schedules A-1 and A-2 attached hereto.

4. Lease Fees and Common Area Charges

The lease fees payable by the Operator to the Town for the term of the agreement shall be as follows:

1 ST Year	\$12.00 sq. ft./year - plus common area charge of \$1.25 sq. ft./year
2 ND Year	\$12.00 sq. ft./year - plus common area charge of \$1.35 sq. ft./year
3 RD Year	\$12.00 sq. ft./year - plus common area charge of \$1.50 sq. ft./year

Payments shall be made on the fifteenth (15th) day of each month. Cheques shall be made payable to the Corporation of the Town of Fort Erie and delivered to the Director of Finance, Town of Fort Erie by no later than the fifteenth (15th) day of each month.

5. Operator Leasehold Improvements and Fixtures

The Operator shall be responsible for all leasehold improvements within the Pro/Sports Shop Premises as well as all fixtures and equipment associated with the operation of a retail business.

6. **Town Responsibilities**

The Town agrees to provide electrical services to the Pro/Sports Shop Premises and provide the Pro/Sports Shop Premises in shell condition including appropriate venting for skate sharpening, ready to accept the Operator's leasehold improvements and fixtures.

The Town agrees to heat, ventilate and air condition the Pro/Sports Shop, regulated so as to maintain reasonable conditions of temperature and humidity within these areas.

The Town agrees to maintain, to reasonable daily housekeeping standards, the overall Leisureplex facility.

7. **Pro/Sports Shop Services Exclusive**

The Town agrees no other vendors or vending/mechanical machines selling similar products or providing similar services as those provided by the Operator shall be permitted to operate in the Leisureplex without the prior written consent of the Operator, which consent may be unreasonably withheld.

8. **Conduct and Operation of Business**

The Town may make reasonable regulations with regard to the use and occupancy of the Pro/Sports Shop Premises and the Operator shall fully comply with such regulations provided that no such rules or regulations shall limit the pricing of services or products by the Operator. The Operator shall:

- (a) operate its business with due diligence and efficiency and maintain an adequate staff to properly serve all customers;
- (b) observe and obey the rules and regulations of the Town promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operation of the Leisureplex.
The Town agrees that except in cases of emergency, it will give the Operator notice of every new rule or regulation adopted by it at least five (5) days before the Operator shall be required to comply herewith;
- (c) abide by all rules and regulations and general policies formulated by the Town from time to time relating to the delivery of goods and merchandise to the Pro/Sports Shop Premises;

- (d) not commit or suffer or permit to be committed any waste upon or damage to the Pro/Sports Shop Premises or any nuisance;
- (e) not erect, maintain or display any signs or any advertising at or on the exterior of the Leisureplex without prior written approval of the Town;
- (f) keep the Pro/Sports Shop Premises clean, neat and free of hazards and fire dangers at all times;

9. Independent Contractor

The Operator shall act solely as an independent contractor and shall retain complete control over its agents, employees and administrators.

10. Restrictions

- (a) The sale of food and beverages is prohibited at all times unless prior permission is obtained in writing from the Food Services Operator in the Leisureplex acting reasonably.

11. Employees

The Operator shall provide at all times, a sufficient number of employees to operate the Pro/Sports Shop Premises. All personnel employed shall not be employees of the Town.

12. Payroll Taxes and Costs

The Operator shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and provincial employment taxes and payroll insurance with respect to its employees, including Workers' Compensation costs.

13. Sanitation and Housekeeping

The Operator shall at all times be responsible for the regular housekeeping of the Pro/Sports Shop Premises.

14. Waste Management

The Operator shall each day be responsible for emptying and transporting waste from the Pro/Sports Shop Premises to the waste confinement area inside or outside the Leisureplex as directed to by the Town. The Operator will commit to participate in any applicable Town recycling program.

15. Inventory of Supplies

The Operator shall be required to purchase an inventory of products and supplies. The resulting inventory shall be the property of the Operator.

16. Security and Repairs

The Town is not responsible for providing security to the Pro/Sports Shop premises over and above that provided to the Leisureplex nor for making repairs or renovations to the Pro/Sports Shop Premises and any equipment and fixtures.

17. Washrooms

The Town acknowledges that the Operator's staff shall be entitled to use the Leisureplex washrooms as located in the Leisureplex.

18. Utility Charges

The Town shall provide electricity to the Pro/Sports Shop Premises during the term of this agreement and such costs shall form part of the annual common area charges as set out under Article 4.

19. Management

The Operator shall manage the Pro/Sports Shop Premises at its own risk, provided that the Town shall insure the entire Leisureplex against casualty and shall take what steps are necessary to ensure that the Operator and his employees, officers and directors will have the benefit of such casualty insurance without risk of subrogated claims from the Town's

insurer. The Operator agrees not to sublet or subcontract the Pro/Sports Shop Premises or the services being provided.

20. Realty and Business Taxes

The Operator shall pay the applicable realty and business taxes as determined by the Regional Assessment Office.

21. Other Taxes

The Operator shall collect any applicable taxes in respect of the sales to its customers and shall remit the taxes to the appropriate taxing authority as required by law. Furthermore, the Operator shall be responsible for the payment of any applicable Goods and Services Tax imposed on the fees and charges paid pursuant to Articles 4 of this agreement.

22. Hours of Operation

The hours of operation shall be as determined by the Operator. However, the Operator acknowledges and agrees to provide mandatory hours as determined by the Director of Parks & Leisure Services acting reasonably.

23. Signage

The Operator shall have the right from time to time during the term, at his expense, to erect, paint, display, maintain and/or change or remove advertising signs on the exterior and interior of the walls of the Pro/Sports Shop Premises. All such signs shall be subject to prior approval of the Director of Parks & Leisure Services acting reasonably. All such signs shall be dignified in appearance and shall comply with the lawful requirements of municipal and governmental authorities and shall remain the property of the Operator and shall be removed by the Operator upon the expiration or sooner termination of the term. The Operator shall indemnify the Town against any loss or damage whatsoever caused to any person or thing as the result of the placing or use of any sign on the Pro/Sports Shop Premises. The Operator shall have the right to advertise on a Highway #3 visible Civic Centre pylon sign designed and installed by the Town. The Operator shall be responsible for his pro-rated share of the sign's cost based on area of sign utilized by Operator.

24. Liability Insurance Policy

The Operator shall furnish the Town with a certified copy of a Fire (contents/leasehold improvements), Theft and Liability Insurance Policy, covering Public Liability and Property Damage, in a minimum amount of Two Million Dollars (\$2,000,000.00). Such policy shall contain:

- (a) a cross-liability clause or endorsement;
- (b) an endorsement certifying that the Town is included as an additional insured, and;
- (c) an endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days advance written notice to the Town.

25. Indemnification of the Town

Except to the extent caused by the Town, or any of its agents, contractors, employees or servants, the Operator will indemnify the town and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Pro/Sports Shop Premises, the occupancy or use by the Operator of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Operator, its agents, contractors, employees, servants, licenses, or concessionaires or invitees. In case the Town shall, without fault on its part, be made a party to any litigation commenced by or against the Operator, then the Operator shall protect and hold the Town harmless and shall pay all costs, expenses and solicitors' and counsel fees on a solicitor and his client basis incurred or paid by the Town in connection with such litigation.

26. Labour

The Operator must remain in good standing with the Workers' Compensation Board, as well as comply with all other relevant employment statutes, including the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code.

27. Default

Failure to comply with all terms and conditions of this agreement, shall be just cause for the cancellation of the agreement provided that defaulting party has received at least thirty (30) days written notice from the non-defaulting party and an opportunity to rectify prior to cancellation.

28. Key

A key to the Pro/Sports Shop Premises must be provided to the Director of Parks & Leisure Services of the Town for emergency purposes. The Operator hereby grants permission to the Director or his/her designate to enter the premises solely in case of an emergency.

29. Advertising

Pro/Sports Shop advertising shall be in the Leisureplex subject to the approval of the Director of Parks & Leisure Services.

30. Assignability

This agreement may not be assigned by either party.

31. Condition

This agreement is conditional upon the Operator obtaining all necessary permits and approvals, and licences to construct its leasehold improvements and to operate from the Pro/Sports Shop Premises. If the Operator is unable to obtain any such necessary permits, licences and approvals, then the Operator in his discretion shall be entitled to terminate this agreement without further liability.

32. **Notice**

Any notice or communication required or permitted to be given under this agreement shall be in writing and shall be serviced personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the other party as follows:

Notices to the Town:	The Corporation of the Town of Fort Erie 1 Municipal Centre Drive Fort Erie, Ontario L2A 2S6 Attention: Carolyn J. Kett, Town Clerk
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Notices to the Operator:	Family Sports Limited 800-43 Niagara Street North Welland, Ontario L3C 5Z4 Attention: Lyle Lichty
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and/or to such other persons or places as either of the parties may hereafter designate in writing. All such notices that have been delivered shall be effective when received. Mailed notices shall be considered received three (3) business days after the same are deposited in the mail.

33. **Compliance with Law**

The Operator shall comply with the laws, ordinances, rules and regulation of all applicable federal, provincial, municipal, regional and local governments, bureaus and authorities concerning the sanitation, safety and health and shall procure and maintain all necessary licenses and permits necessary for the operation of the Pro/Sports Shop Premises.

34. **Governing Law**

This agreement and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario.

35. Severability

If any term or provision of this agreement or the application thereof to any persons or circumstances shall to any extent or for any reason be held invalid or unenforceable, the remainder of this agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this agreement shall be valid and enforced to the fullest extent permitted by law.

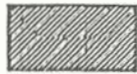
36. Amendments to Agreement

Each of the Articles (and appendices) shall remain in effect throughout the term of this agreement unless the parties agree, in a written document signed by both parties to amend, add or delete an Article or Appendix. This agreement contains all the agreements of the parties, superseding any prior agreements and writing and may not be changed other than by an agreement in writing, signed by the parties.

IN WITNESS WHEREOF the Operator and the Town have executed this agreement as of the date of this agreement set out above.

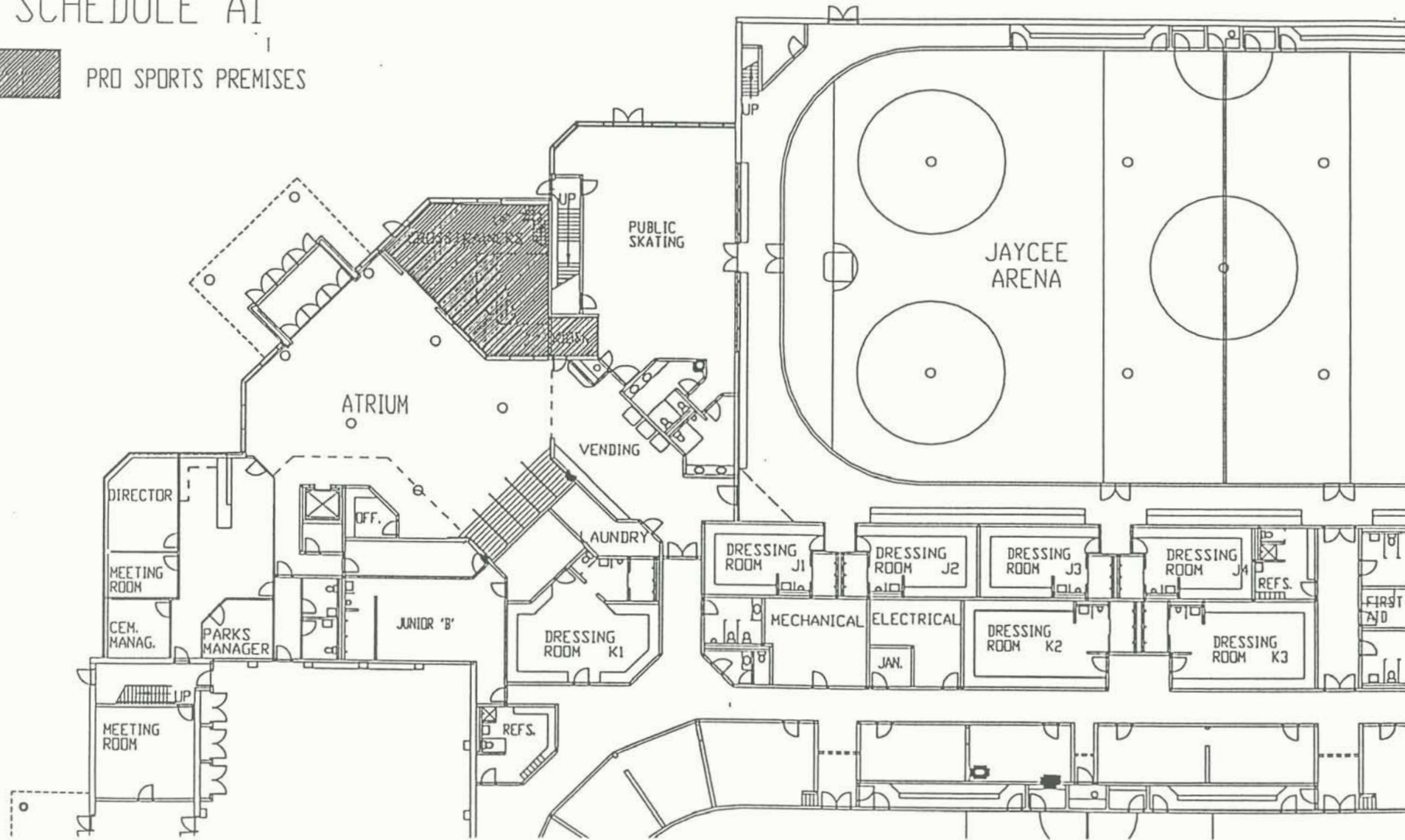
SIGNED, SEALED AND DELIVERED)	THE CORPORATION OF THE
In the Presence of:)	TOWN OF FORT ERIE
)	
)	
)	_____
)	MAYOR
)	
)	_____
)	CLERK
)	
)	FAMILY SPORTS LIMITED
)	By:
)	_____
_____)	
WITNESS)	

SCHEDULE A1

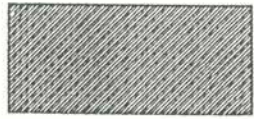


PRO SPORTS PREMISES

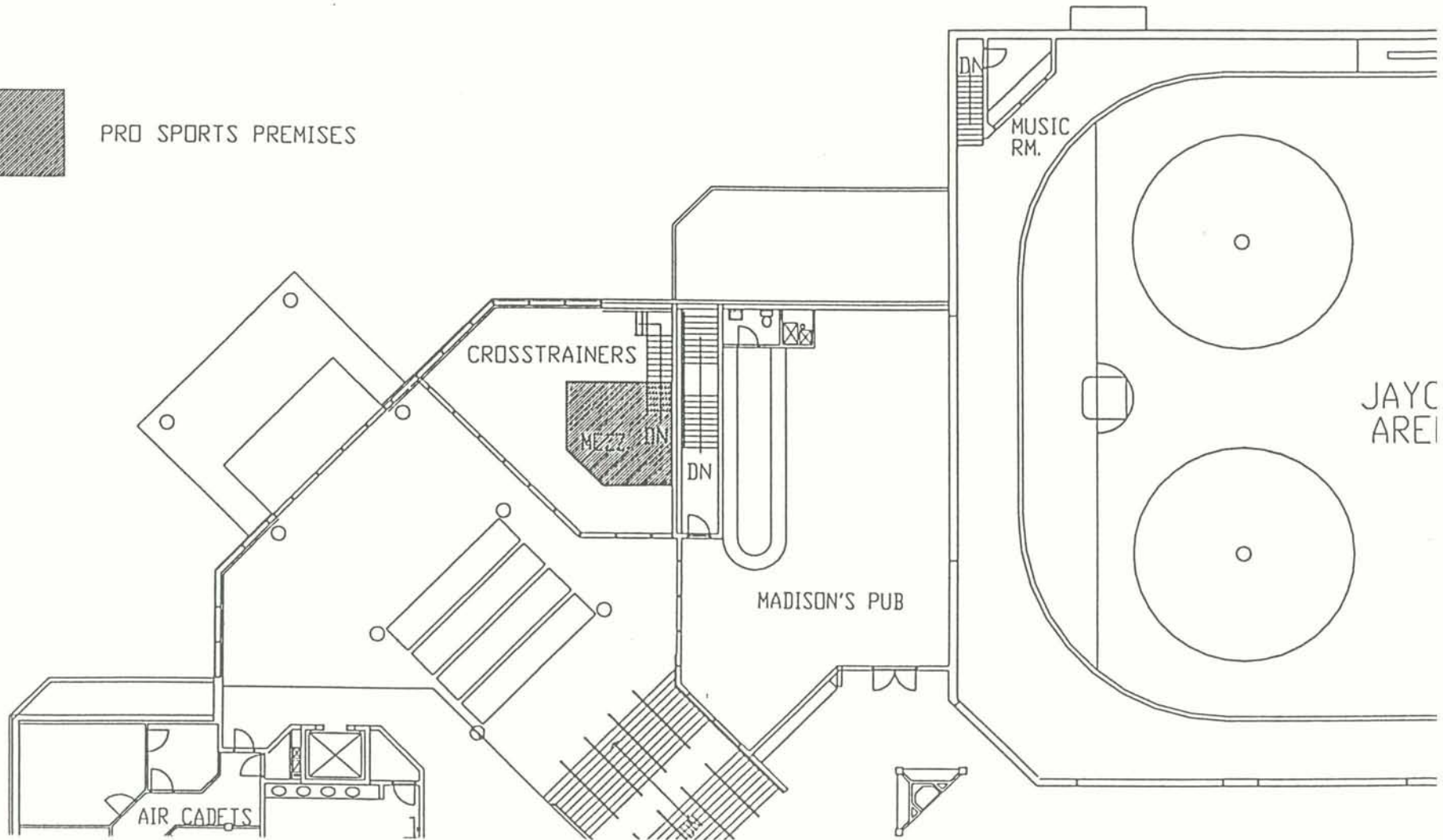
SCHEDULE "A-1" TO SCHEDULE "A" TO
BY-LAW NO. 89-2000



SCHEDULE A2



PRO SPORTS PREMISES



SCHEDULE "A-2" TO SCHEDULE "A" TO
BY-LAW NO. 89-2000