

Bill No. 276
2012

By-law No. A.-

A by-law to authorize and approve a Licence Agreement between The Corporation of the City of London and the Ontario Senior Games Association (London District 30) regarding the use of City of London facilities and sports fields for summer and winter Senior Games; and to authorize the Mayor and the City Clerk to execute the Agreement

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS section 107 of the *Municipal Act, 2001* provides that the City may make grants (including the power to provide for the use by any person of land owned or occupied by the municipality upon such terms as may be fixed by council) to any person, group or body, for any purpose that Council considers to be in the interests of the municipality;

AND WHEREAS Council considers it to be in the interests of the municipality to provide a licence to the Ontario Senior Games Association to use Carling Heights Optimist Community Centre, Kiwanis Senior Centre, North London Optimist Community Centre, Springbank Park and Stronach Recreation Community Centre;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Licence Agreement attached as Schedule "A" to this by-law between The Corporation of the City of London and Ontario Senior Games Association (District 30) for the use of portions of Carling Heights Optimist Community Centre, the Kiwanis Senior Centre, North London Optimist Community Centre, Springbank Park and the Stronach Recreation Community Centre, is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 26, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - June 26, 2012
Second Reading - June 26, 2012

Third Reading - June 26, 2012

Schedule "A"

Licence Agreement – Ontario Senior Games Association (London District 30)

THIS LICENCE AGREEMENT, dated this June 19, 2012 with effect as of the 1st day of July 2012.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
("City")

and

ONTARIO SENIOR GAMES ASSOCIATION (LONDON DISTRICT 30)
("Licensee")

WHEREAS the City owns the properties located at 656 Elizabeth Street (the Carling Heights Optimist Community Centre, "CHOCC"), 78 Riverside Drive (the Kiwanis Senior Centre), 1345 Cheapside Street (the North London Optimist Community Centre, "NLOCC"), 1260 Commissioners Road West (Springbank Park), and 1221 Sandford Street (the Stronach Recreation Community Centre), all in the City of London ("City Facility" and "City Facilities"), and more particularly set out in Appendix "B";

AND WHEREAS the City considers it in the interests of the municipality to provide support to the Licensee and its services, as these services benefit the community;

AND WHEREAS the Licensee is a not for profit organization that works to increase participation in recreation and promote active living for older adults;

AND WHEREAS the London Senior Games is a member of the Ontario Senior Games Association and identified as District 30 in the province;

NOW THEREFORE IN CONSIDERATION of the premises and the mutual covenants and agreements herein, the parties agree as follows:

1. Licence:

1.1 The City grants this licence to permit the Licensee to use, annually those portions of the City Facility set out below in this section, and pursuant to the terms and conditions contained in this Agreement as set out below –

(a) **Board Meetings For Planning of Summer Games and Winter Games**

- (i) NLOCC Multi-Purpose Room 1, for a maximum of 15 hours, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
- (ii) CHOCC Conference Room, for a maximum of 4.5 hours, specific dates and times to be approved in writing in advance by the Manager of the City Facility.

(b) **For Summer Games**

- (i) Kiwanis Senior Centre:
 - I. Auditorium, for a maximum of 6 hours on one day for Carpet Bowling, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
 - II. Auditorium, for a maximum of 6 hours on one day for Darts, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
- (ii) Springbank Park, Roadway, for a maximum of 4 hours on one day for Cycling, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
- (iii) CHOCC, Gymnasium A, for a maximum of 4 hours on one day for Floor Shuffleboard, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
- (iv) NLOCC, Gymnasium, for a maximum of 6 hours on one day for Pickleball, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
- (v) Stronach Stadium, for a maximum of 7 hours on one day for Slo-Pitch, specific dates and times to be approved in writing in advance by the Manager of the City Facility;

(c) **For Winter Games**

- (i) CHOCC, Gymnasium A, for a maximum of 8 hours on one day for Table Tennis, specific dates and times to be approved in writing in advance by the Manager of the City Facility;
- (ii) NLOCC, Gymnasium, for a maximum of 5 hours on one day for Volleyball, specific dates and times to be approved in writing in advance by the Manager of the City Facility.

1.2 **Closures, Emergencies:** Notwithstanding the use granted by this licence, the City Facility shall not be available to the Licensee on days during which the City has closed the City Facility for any reason (including but not limited to inclement weather and holidays) or if there is an emergency requiring the use of the City Facility as an Emergency Reception Centre.

1.3 In the event that the Licensee determines that it will not be using a portion of the City Facility that the Licensee has booked, the Licensee shall notify the City in writing of the cancellation at least 72 hours prior to the allocated date and time.

1.4 At the sole discretion of the City's Executive Director of Community Services, and upon providing at least two weeks' written advance notice, the City may cancel the Licensee's use of the City Facility for any allocated date or time the Licensee has booked.

2. Term:

2.1 The term of this Licence Agreement shall be for a period of five (5) years, commencing May 1st, 2012 and terminating April 30th, 2017, or terminating at such earlier date pursuant to section 10 of this agreement.

Renewal:

2.2 At the expiration of the initial term of this Agreement, the Agreement is automatically renewed for one year (July 1st of one year to June 30th of the following year) and continues in force for a maximum of five one-year renewals, unless sooner terminated pursuant to section 10 of this Agreement.

3. Licence Fee:

3.1 The Licensee shall pay to the City a licence fee of the Not for Profit rental fee less than 8 hours and Special Event-Other administration fee for the Cycling event at Springbank Park.

4. Obligations of the Licensee:

4.1 Use of City Facility

The Licensee shall use the City Facility solely for the purposes of the meeting space for planning the Senior Games, and program space for both the summer and winter Senior Games.

4.2 Access – Not Outside Program Hours

The Licensee and those for whom it is responsible at law shall not access the City Facility except during those dates and times as approved in writing by the Manager of the City Facility. If the Licensee and those for whom it is responsible at law require additional time to access the City Facility (e.g. set up for the Seniors Games, drop off of equipment or supplies), the Licensee shall obtain prior written permission from City personnel prior to such access.

4.3 Where the Licensee charges an admission fee for any program, the Licensee shall be responsible for collecting such fees and such fees shall not be a fee or charge of the City.

5. Licensee Covenants, Representations and Warranties:

5.1 The Licensee covenants and agrees as follows:

- (a) to use the City Facility only for the purpose set out in this Agreement;
- (b) to maintain the appearance of the City Facility in a neat, tidy, clean and well-kept manner, free from garbage and debris;
- (c) to ensure that no rubbish, refuse, or material that in the sole opinion of the City is objectionable, accumulates in or about the City Facility;
- (d) to promptly inform the City and document all damages or repairs in a log book available for City inspection;
- (e) to reimburse the City for any excess cleaning above that normally provided by the City;
- (f) to reimburse the City in full for any repairs the City makes as a result of the use of the City Facility by the Licensee;
- (g) to ensure that appropriate supervision is provided during use of the City Facility;
- (h) not to bring into the City Facility or store at the City Facility dangerous materials, including but not limited to flammable or explosive materials;
- (i) to ensure:
 - i. smoking is not permitted on the City Facility in contravention of the City's smoking by-laws or Provincial law;
 - ii. drinking of alcoholic beverages is not permitted on the City Facility unless in compliance with an ACGO permit and City alcohol policy;
 - iii. that vehicles will be parked at the City Facility only in designated parking areas;
- (j) to comply with all Federal and Provincial Legislation, Rules, Regulations, Municipal By-laws and applicable Policies; and
- (k) the complete care, custody and control of the City Facility and City premises, shall at all times remain with the City through its management, supervisory, custodial and maintenance employees, excluding contents owned by the Licensee or its members, invitees, or persons for whom it is at law responsible.

5.2 Licensee Liable for London Senior Games members and invitees

- (a) The Licensee represents and warrants that it is legally liable and responsible at law for all actions taken pursuant to this Agreement by the members and invitees of the organization known as the London Senior Games.
- (b) The Licensee shall be legally liable and responsible at law for all actions taken pursuant to this Agreement by the members and invitees of the organization known as the London Senior Games.
- (c) On an on-going basis, the Licensee shall provide the City with a current list of all current members of the London Senior Games, and the Licensee shall provide the City with a list of individuals who may act on behalf of the Licensee pursuant to this Agreement.

6. Obligations of the City:

Custodial Services

6.1 The City will be responsible for all custodial services for the City Facility.

6.2 The City agrees as follows, to a standard as determined solely in the City's discretion:

- (a) to keep the sidewalks and parking areas at the City Facility clean and reasonably free of ice and snow;
- (b) to clean and maintain the City Facility and entrances to the City Facility;
- (c) to keep the City Facility in a good state of repair, except that the City's obligation to repair shall not extend to any repairs, damages, injuries or maintenance which arise from or results from the willful or negligent act or omission of the Licensee or its agents or of those for whom it is at law responsible. The Licensee shall be responsible to the City for reimbursement for any repairs or maintenance done by the Licensee to City property, without the prior written approval of City staff.

7. General Provisions:

- 7.1 The Licensee accepts the City Facilities in their condition as of the date of this Agreement and shall not call upon the City to do or pay for any work or call upon the City to supply any equipment to make the City Facilities or premises more suitable for the proposed use by the Licensee.

Donations

- 7.2 Any items donated by the Licensee to the City shall become the property of the City and the City may use or dispose of such items as in its sole discretion it sees fit. Any items remaining in the City Facility for more than 15 days following termination of this License shall be deemed a donation to the City.

Inspections by City

- 7.3 The City may inspect the City Facility at any time to ensure compliance with the terms of this Agreement and any Federal or Provincial Legislation, Regulations, Municipal By-laws and applicable Policies.

Not Responsible for Damage/Theft

- 7.4 The City shall not be responsible for any damage or theft to vehicles parked in the parking areas. The City shall not be responsible for any loss or damage to the Licensee's equipment or property. The City shall not be responsible for any loss or damage to the equipment or property of persons for whom the Licensee is at law responsible.

No Assignment

- 7.5 The Licensee shall not assign this agreement or sublicense any part of the Premises without first obtaining the written consent of the City.

Repairs/Construction

- 7.6 The Licensee acknowledges that the City may make repairs, additions and/or construction to the City Facility and/or premises from time to time. The Licensee agrees that at such times it may be required to vacate such location as and when directed by the City, and the City shall not be liable to pay any refund or damages to the Licensee resulting from same.

Use of Premises for Meetings and for Summer and Winter Games – Approved Plan

- 7.7 (a) At least six months prior to a Summer Games or a Winter Games, the Licensee shall seek the written approval of the City for its program plan for use of all non-exclusive licensed spaces within the City Facilities. The Licensee shall set out in its program plan the following:
- (i) dates, times, locations of programs and events within the City Facility; and
 - (ii) number of people expected for each program and event.
- (b) If the program plan meets the City's criteria, the City (Manager of the Facility) may in its sole discretion, approve in writing the program plan ("Approved Plan").
- (c) In the event that the Licensee does not provide the City with a program plan, or if the City does not approve the program plan for that year, the Licensee shall utilize the most recent Approved Plan, with any modifications to the Approved Plan as determined by the City.

8. Insurance and Indemnification:

8.1 Insurance

- (a) Throughout the term of this agreement, the City agrees to obtain and maintain at its own expense general liability insurance for legal liability arising out of bodily injury, including death, or property damage covering its ownership, maintenance and activities at the City Facility in an amount of not less than five million (\$5,000,000.00) dollars subject to a deductible usual to a corporation of its size.
- (b) Throughout the term of this agreement, the Licensee shall obtain and maintain the coverage shown below and shall provide that the following insurance will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry:
- (i) Third party general liability insurance covering all claims for negligence, nuisance, property damage and bodily injury, including death, arising out of the use of the City Facility by the

Licensee. Such policy shall include the City as an additional insured with respect to this Agreement and be in an amount not less than **five million (\$5,000,000.00) dollars** including personal injury liability, broad form property damage liability, contractual liability, owners' and contractors' protective liability, non-owned automobile liability, contingent employer's liability, and shall contain a severability of interests clause and cross-liability clauses.

- (ii) Tenants legal liability insurance in an amount not less than \$100,000.00 and
 - (iii) Standard all-risk property insurance covering the property of the Licensee, including leasehold improvements, in an amount not less than the full replacement cost value with a deductible of no more than \$2,500.00; such policy shall include a waiver of subrogation in favour of the City;
- (c) Evidence of insurance in 8.1 (ii) above shall be provided on City of London form #0788 at the inception of this agreement.
 - (d) The Licensee shall not do, omit to do, or permit to be done or omitted to be done on or at the City Facility anything that may increase premiums or void coverage under the property insurance policies carried by the City for the City Facilities described in this agreement.
 - (e) Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this agreement.
 - (f) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this agreement as the City may reasonably require from time to time.

8.2 Indemnification

The Licensee agrees to protect, defend, indemnify and save the City harmless from and against: (a) all liability, loss, claims, demands, actions, proceedings, fines or penalties, including any costs and expenses incurred by the City thereby, including reasonable legal fees, for loss, damage or injury, including death, to any person or persons and to any property arising in connection with this Licence as a result of any act or omission of the Licensee or the group represented by or affiliated with the Licensee or their members, officers, employees, agents or contractors, invitees, or other persons for whom the Licensee is at law responsible; and (b) any claim or finding that any of the Licensee, the Licensee's employees or persons for whom the Licensee is at law responsible are employees of, or are in any employment relationship with, the City or are entitled to any Employment Benefits of any kind; and (c) any liability on the part of the City, under the Income Tax Act (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, by virtue of any of the following being considered to be an employee of the City, from Licensee: Licensee's employees or others for whom Licensee is at law responsible in connection with the licensing of the Premises or otherwise in connection with Licensee's operations.

9. **Status of Licensee:**

- 9.1 The Licensee acknowledges and agrees this Agreement shall in no way be deemed or construed to be an Agreement of Employment. Specifically, the parties agree that it is not intended by this Agreement that the Licensee, nor any person employed by or associated with the Licensee is an employee of, or has an employment relationship of any kind with the City or is in any way entitled to employment benefits of any kind whatsoever from the City whether under internal policies and programs of the City, the *Income Tax Act*, R.S.C. 1985 c.1 (1st Supp); the *Canada Pension Act*, R.S.C. 1985, c.C-8; the *Employment Insurance Act*, S.O. 1996,c.23; the *Workplace Safety and Insurance Act*, 1997 S.O. 1997, c.26 (Schedule "A"); the *Occupational Health and Safety Act*, R.S.O. 1990, c.o.1; the *Pay Equity Act*, R. S. O. 1990, c.P.7; the *Health Insurance Act*, R.S.O. 1990, c.H.6; or any other employment related legislation, all as may be amended from time to time, or otherwise.

- 9.2 Notwithstanding paragraph 9.1 above, it is the sole and exclusive responsibility of the Licensee to make its own determination as to its status under the Acts referred to above and, in particular, to comply with the provisions of any of the aforesaid Acts, and to make any payments required thereunder.
- 9.3 The Licensee shall operate independently of the City and is not the agent or servant of the City for any purpose.
- 9.4 Nothing in this Agreement shall entitle or enable the Licensee or any subcontractor to act on behalf of, or as agent for, or to assume or create any obligation on behalf of, or to make any representation, promise, and warranty or guarantee binding upon, or otherwise to bind the City. The Licensee and any subcontractor of the Licensee and the City is independent and not the agent, employee, partner or joint venturer of any of the others.

10. Termination:

Termination by the City

- 10.1 If the Licensee defaults in performing any of its obligations under this Agreement, the City may terminate the licence granted under this Agreement immediately without liability.
- 10.2 The City may terminate this Agreement for any reason without liability by providing notice in writing seven (7) calendar days prior to the date of such termination.
- 10.3 In the event of termination of this agreement, the City shall have no further obligations to the Licensee.
- 10.4 Any waiver by the City of any breach by the Licensee of any provisions of this Agreement shall be without prejudice to the exercise by the City of all or any of its rights or remedies in respect of any continuance or repetition of such breach.

Termination by the Licensee

- 10.5 The Licensee may terminate this Agreement without liability upon thirty (30) days prior written notice for any reason.

11. Notice:

- 11.1 Any notice required to be given to the City or the Licensee under this Agreement shall be sufficiently given if delivered personally or by courier, transmitted by fax, or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery if delivered personally, by courier or by fax, or in the case of mailing, three (3) business days after it was delivered to the post office. In the event that the Licensee's corporate mailing address changes, it is the responsibility of the Licensee to notify the City immediately of the address change.

City's Address

City Clerk
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
LONDON, ON N6A 4L9

Ontario Senior Games Association

3 Concord Gates
Suite 310 Toronto, Ontario
Toronto, Ontario
M3C 3N7

12. Circumstances Beyond the Control of Either Party

12.1 Neither party will be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the City or the Licensee including strike, lockout or any other action arising from a labour dispute, fire (other than a fire caused by the Licensee’s negligence), natural flood, act of God, war, riot or other civil insurrection, lawful act of public authority, all of which cannot be reasonably foreseen or provided against.

13. Execution

13.1 The Licensee acknowledges that it has read this agreement, understands it and agrees to be bound by its terms and conditions. Further the Licensee agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreement, oral or written, and all other communications between the parties relating to the subject-matter of this Agreement.

14. Independent Legal Advice

14.1 The Licensee acknowledges that it has had the opportunity to obtain independent legal advice with respect to this agreement.

IN WITNESS WHEREOF the Licensee has duly executed this Agreement, attested by the hands of its duly authorized officers.

SIGNED SEALED AND DELIVERED

**ONTARIO SENIOR GAMES ASSOCIATION
(London District 30)**

Date

Per (Signature): _____
Gayle Prior, Vice President

I Have the Authority to Bind the Corporation

Date

Per (Signature): _____

Print Name: _____

Print Title: _____

I Have the Authority to Bind the Corporation

IN WITNESS WHEREOF The Corporation of the City of London has duly executed this agreement under the hands of its Mayor and Clerk,

THE CORPORATION OF THE CITY OF LONDON

Date

Joe Fontana, Mayor

Date

Catharine Saunders, City Clerk

Appendix “B”

City of London Facilities that Ontario Senior Games Association (London District 30) will be using:

Carling Heights Optimist Community Centre

656 Elizabeth Street (off McMahan)
519-66-2500 ex. 2523

Kiwanis Senior Centre

78 Riverside Drive
519-661-2500 ex. 5740

North London Optimist Community Centre

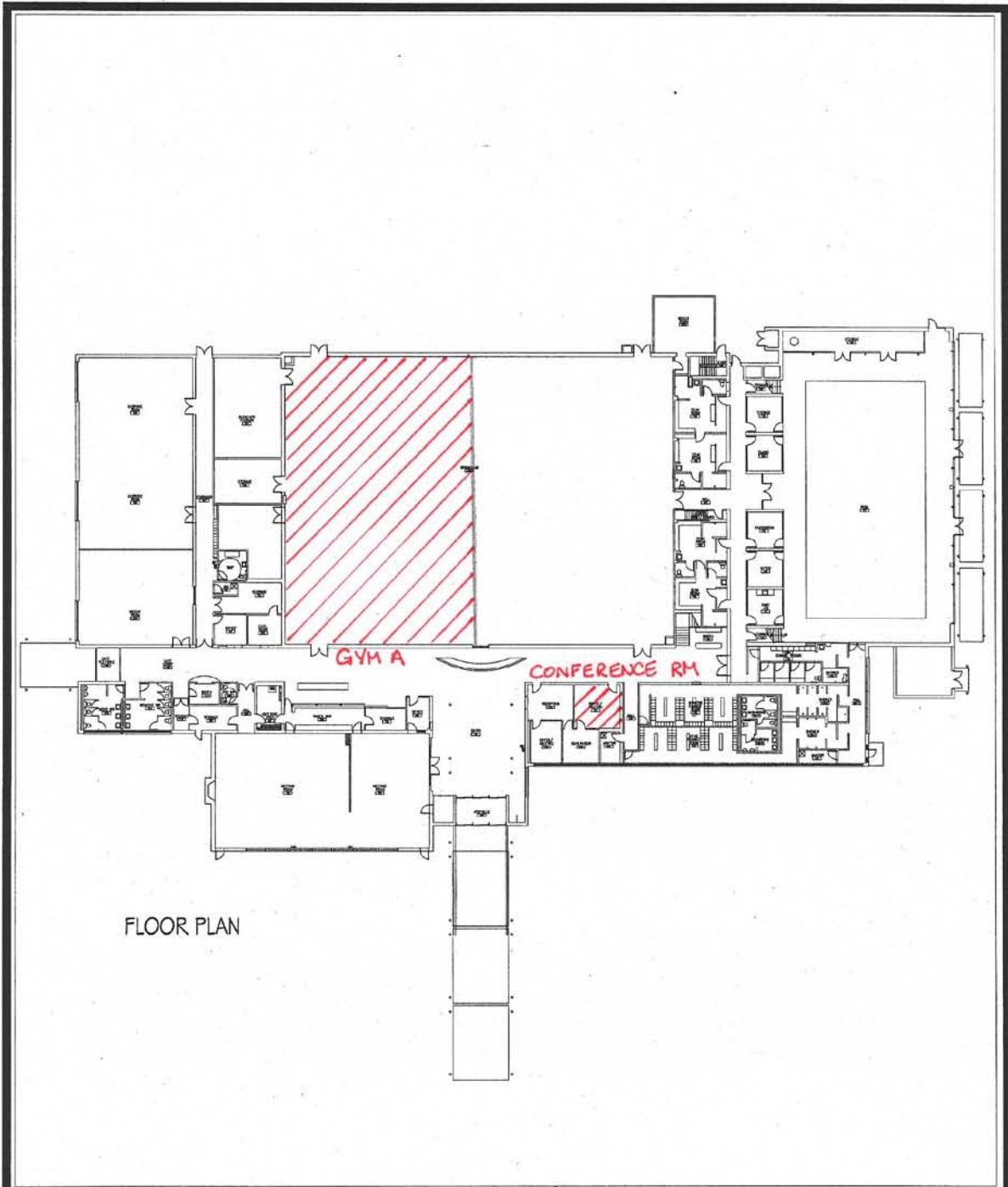
1345 Cheapside Street
519-661-2500 ex. 5198

Springbank Park

1260 Commissioners Road West

Stronach Recreation Community Centre (Stadium)

1221 Sandford Street
519-661-2500 ex. 5673



**FACILITIES
DESIGN &
CONSTRUCTION**

PROJECT DESCRIPTION

CARLING HEIGHTS OPTIMIST
COMMUNITY CENTRE

PROJECT NO.

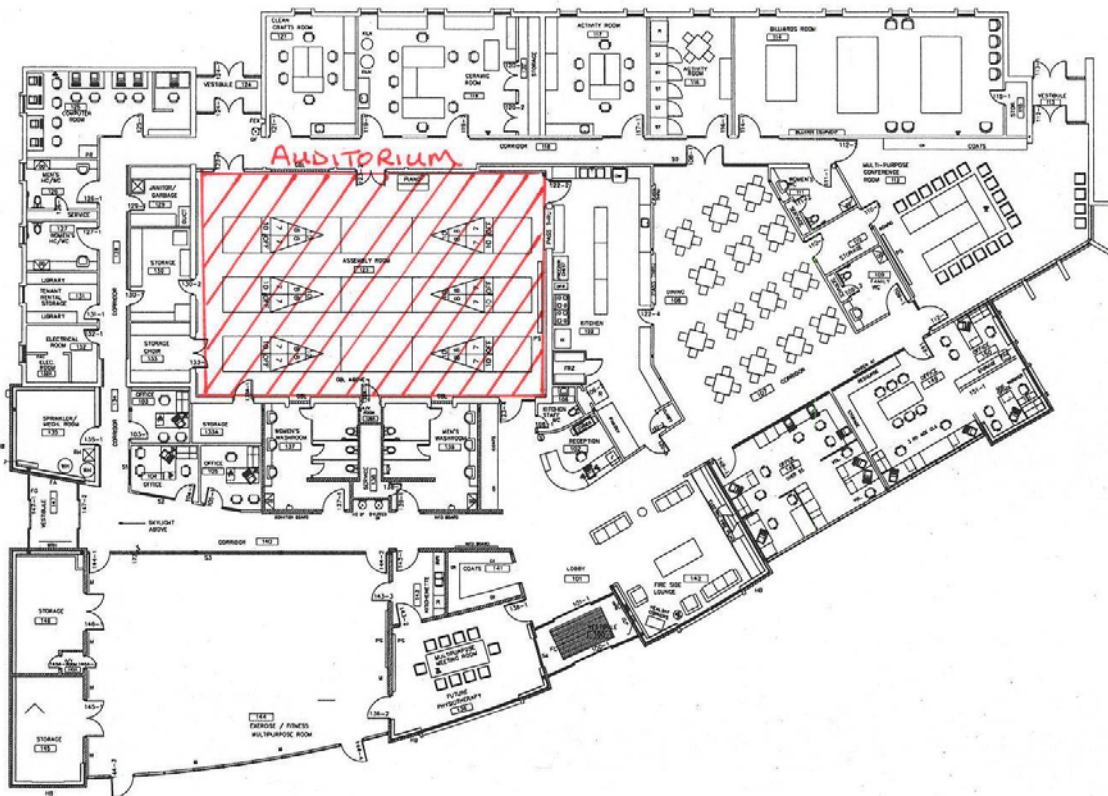
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DRAWN BY: DD

CHECKED BY: TW

DATE: 04.20.2010

AI



FLOOR PLAN



**FACILITIES
DESIGN &
CONSTRUCTION**

PROJECT DESCRIPTION

KIWANIS SENIOR CENTRE

PROJECT NO.

SCALE: N.T.S.

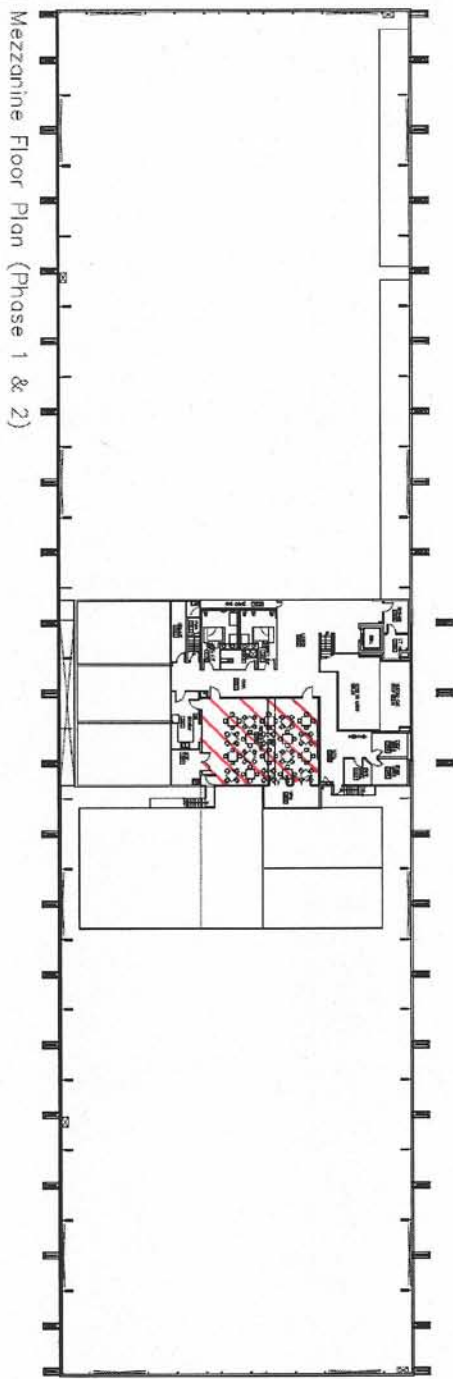
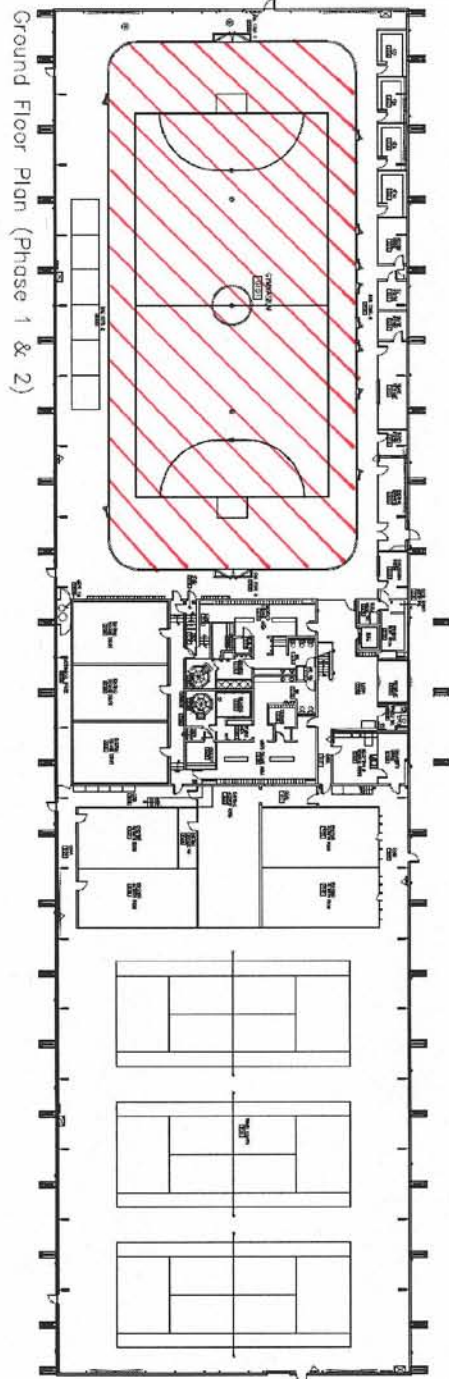
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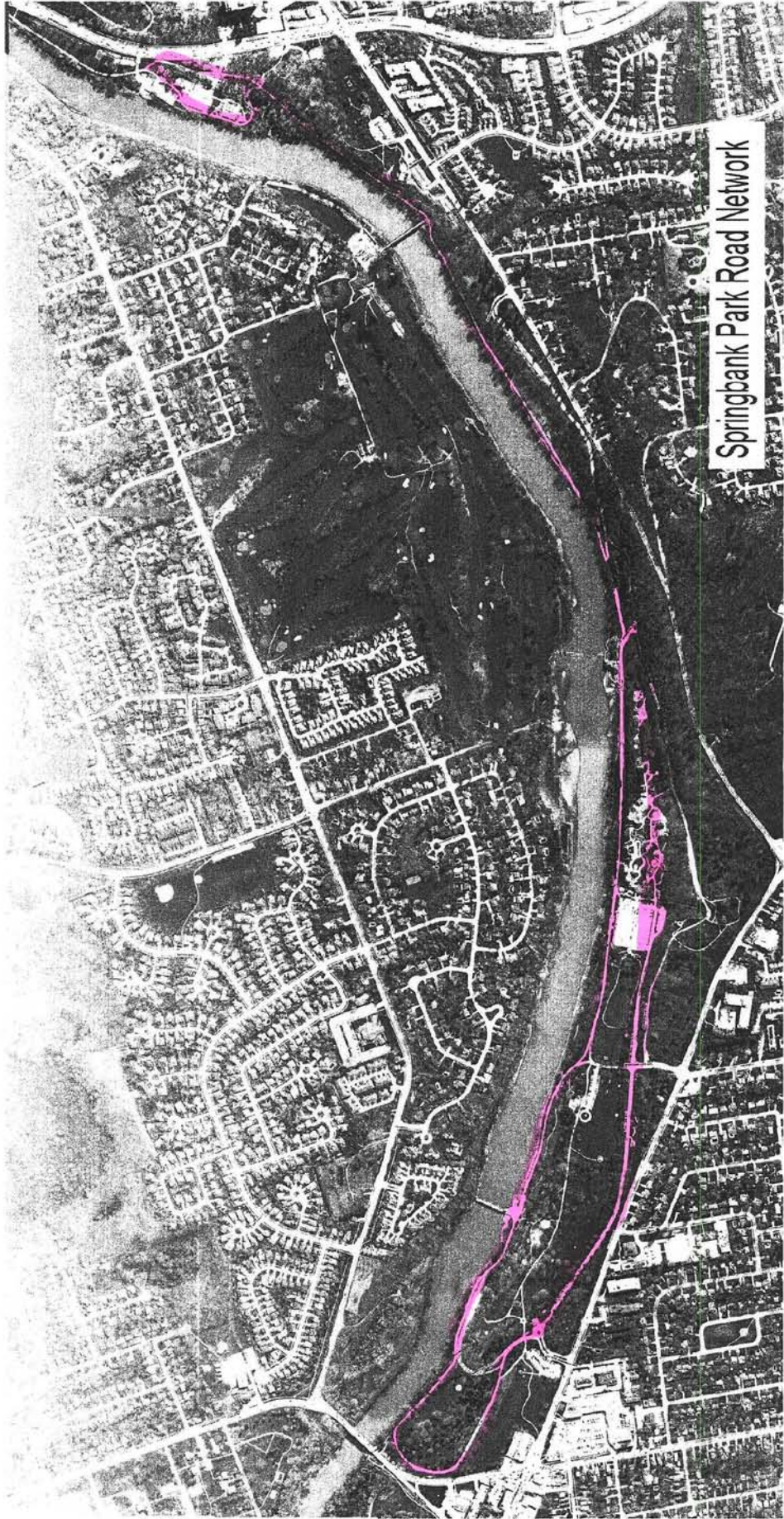
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NORTH LONDON OPTIMIST COMMUNITY CENTRE





Springbank Park Road Network



Imagery ©2011 Earthstar Solutions, GeoEye, Map data ©2011 Google - Edit in Google Map Maker - Report a problem