

CITY OF BURNABY

BYLAW NO. 10512

A BYLAW to authorize the granting of a lease  
of certain City owned property to  
B.C. Volleyball Association

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as BURNABY LEASE AUTHORIZATION BYLAW NO. 6, 1996.
2. The Council is hereby authorized and empowered to lease unto B.C. Volleyball Association upon the terms, covenants and conditions more particularly set forth in the form of lease hereunto annexed as Schedule "A" (hereinafter called the "said lease") those City owned lands and pemises legally described as Lot 1 Except: Part Road on Plan LMP18393, District Lot 215, Group 1, New Westminster District, Plan 83531.
3. The City Clerk is hereby authorized and empowered to execute the said lease, signing the same and affixing the corporate seal thereto.

Read a first time this 16th day of December, 1996


Read a second time this 16th day of December, 1996

Read a third time this 16th day of December, 1996

Reconsidered and adopted this 6th day of January, 1997



MAYOR



CLERK

THIS AGREEMENT made this                      day of                      199

BETWEEN:

**CITY OF BURNABY**  
4949 Canada Way  
Burnaby, B.C. V5G 1M2

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

**B.C. VOLLEYBALL ASSOCIATION**  
#405 - 1367 West Broadway  
Vancouver, B.C. V6H 4A9

(hereinafter called the "Lessee")

OF THE SECOND PART

WHEREAS the Lessor is the owner of lands at 7564 Barnet Highway, Burnaby, B.C. and legally described as:

Lot 1 Except: Part Road on Plan LMP18393, District Lot 215, Group 1,  
New Westminster District, Plan 83531

(the "Lands")

AND WHEREAS the Lessee is a non-profit society registered under the *Society Act*, Chapter 390 R.S.B.C. for the purposes provided in its Constitution, a copy of which is attached hereto as Schedule "A";

AND WHEREAS the Lessee wishes to lease the Lands from the Lessor for a term of five years with the intent that the Lessee will complete construction thereon of the partly completed sports centre (the "Sports Centre") to contain a covered volleyball floor, cycling track and related facilities:

AND WHEREAS the Lessor has agreed to lease to the Lessee the Lands upon the terms and conditions herein contained;

NOW THIS AGREEMENT WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor doth hereby demise and lease the Lands unto the Lessee and the Lessee does hereby take and rent the Lands upon and subject to the conditions hereinafter expressed.

To have and to hold the Lands from the 1st day of January, 1997 to the 31st day of December, 2001 (the "Term") yielding and paying to the Lessor for the Term rent as hereinafter provided.

Provided the Lessee is not in default of any condition or provision of this Lease and the Lessee serves written notice on the Lessor on or before the 1st day of June, 2001 requesting the grant of a further five year lease of the Lands the Lessor will, subject to the approval of the Council of the Lessor, grant to the Lessee a further lease of the Lands for a five year term (the "First Renewal Term") commencing immediately upon the day of expiration of the Term granted herein, such agreement to contain the same covenants, promises and agreements as the present agreement except as to rent and except that such agreement shall not contain any further right of renewal except in respect of the Second Renewal Term and the Third Renewal Term (as hereinafter defined). Provided that the Lessor gives no warranty or undertaking express or implied as to its power to grant or confer this First Renewal Term.

Provided the Lessee is not in default of any condition or provision of the Lease in respect of the First Renewal Term, and the Lessee serves written notice on the Lessor no later than ninety (90) days before expiration of the First Renewal Term, requesting the grant of a further five year lease of the Lands the Lessor will, subject to the approval of the Council of the Lessor, grant to the Lessee a further lease of the Lands for a five year term (the "Second Renewal

Term") commencing immediately upon the day of expiration of the First Renewal Term granted herein, such agreement to contain the same covenants, promises and agreements as the present agreement except as to rent and except that such agreement shall not contain any further right of renewal except in respect of the Third Renewal at Term (as hereinafter defined). Provided that the Lessor gives no warranty or undertaking express or implied as to its power to grant or confer this Second Renewal Term.

Provided the Lessee is not in default of any condition or provision of the Lease in respect of the Second Renewal Term, and the Lessee serves written notice on the Lessor no later than ninety (90) days before expiration of the Second Renewal Term, requesting the grant of a further five year lease of the Lands the Lessor will, subject to the approval of the Council of the Lessor, grant to the Lessee a further lease of the Lands for a five year term (the "Third Renewal Term") commencing immediately upon the day of expiration of the Second Renewal Term granted herein, such agreement to contain the same covenants, promises and agreements as the present agreement except as to rent and except that such agreement shall not contain any further right of renewal. Provided that the Lessor gives no warranty or undertaking express or implied as to its power to grant or confer this Third Renewal Term.

The amount of rent payable during any Renewal Term shall be the fair market rental for the Lands at the commencement of such Renewal Term as agreed between the parties and, failing such agreement within two months of the commencement of such Renewal Term, as determined by arbitration pursuant to the Commercial Arbitration Act, S.B.C. 1986, c. 53.7. Pending determination of the rent payable during a Renewal Term the Lessee shall continue to pay rent at the rate in effect immediately prior to the commencement of the Renewal Term and when the rent payable during the Renewal Term has been determined the parties shall forthwith make the necessary adjustments as of the commencement of the Renewal Term.

It is further understood and agreed by and between the Lessor and Lessee that if the Term or Renewal Terms are terminated

- (i) due to any default or breach of this Lease by the Lessee or non-observance by the Lessee of any covenant, provision, condition or requirement of this Lease, or
- (ii) by effluxion of time, or
- (iii) at the request of the Lessee and with the concurrence of the Lessor, or
- (iv) due to the destruction of the Sports Centre as provided in clause 7.1

then the Sports Centre and all fixtures therein and all fixed components and any other buildings and structures on the Lands shall become the property of the Lessor without any compensation or payment by the Lessor to the Lessee, except as hereinafter next provided. In the event that the Lessee is not in default of any provisions of this lease and the Lessee requests the grant of the First Renewal Term, and the Lessor does not grant the First Renewal Term as aforesaid, the Lessor shall pay to the Lessee 50% of the Lessee's initial capital investment in the Sports Centre, such payment not to exceed \$80,000.00, and provided that any security interests in the sports floor or other fixtures installed by the Lessee on the Lands have been satisfied.

This Lease is made upon and subject to the preceding and following covenants and conditions.

## **COMPLETION OF CONSTRUCTION OF Sports Centre**

### **General**

1.1 It is a condition of this Lease and the Lessee agrees that forthwith upon commencement of the Term it will undertake completion of the construction and building (the "Lessee's Work") of the Sports Centre, being a multi-purpose fully enclosed sports complex for volleyball and sport activities, comprising a multi-sport infield within a perimeter cycling track in accordance with the building plans approved by the Lessor. The Sports Centre shall be covered

with an air support roof and provide accommodation for offices for sports medicine, administrative offices and ancillary facilities.

1.2 The Lessee shall proceed to promptly apply for and obtain all necessary municipal, provincial and federal approvals for the Lessee's Work and the uses to which it is to be put, and shall ensure that the Lessee's Work proceeds in a prompt, diligent and timely fashion so that the Sports Centre is fully constructed and open to the public and other users on or before May 31, 1997.

1.3 The Lessee shall, notwithstanding any grants or other payments provided or made by the Lessor, be solely responsible for all and every cost, expense and liability in respect of the Lessee's Work and the operation and maintenance of the Sports Centre. Without limiting the generality of the foregoing, the Lessee shall be solely responsible for

- (i) the extension and connection of electrical, water, sewage, telephone and other utility services;
- (ii) all roads, curbs, gutters; and
- (iii) landscaping and maintenance of the Lands.

1.4 The Lessee shall not build, erect, construct, place, maintain or cause, suffer or permit the Sports Centre to be built, erected or constructed except with the prior written approval of the Lessor's Director Recreation and Cultural Services to the plans and specifications for same and the Lessee agrees to strictly adhere to such plans and specifications wholly at its own expense. Without limiting the foregoing, the Lessee shall landscape the Lands in accordance with a landscape plan approved in writing in advance by the Lessor's Director Recreation and Cultural Services. The landscaping is to reflect the surrounding natural environment and incorporate indigenous species of plants.

## **Builders' Liens**

1.5 The Lessee shall promptly pay all amounts for work, service and material when due and shall forthwith remove any builders' liens or other liens or other charges registered against the Lands or any buildings thereon, or any part thereof on account of the Lessee's Work. And the Lessee shall not permit or suffer any charges or builders' lien or other liens for labour, compensation, services or materials to be registered against the Lands or any buildings thereon

The Lessor reserves the right throughout the Term to enter upon the Lands and Sports Centre for the purpose of affixing notices pursuant to the *Builders Lien Act*, R.S.B.C. 1979, c.40, s.13. The form, size and location of posting such notices shall be in the discretion of the Lessor.

The Lessee covenants and agrees to post and keep posted the notices, in the form provided by the Lessor's solicitor, in two conspicuous places on the Lands obvious to workmen, materialmen, contractors and subcontractors from the date the construction of any improvements is commenced until the date which is forty-five (45) days next following the date on which such improvements are substantially completed.

The Lessee shall, in any event, pay, satisfy, release and discharge same within forty-two (42) days after the day of registration of any lien against the Lands or any buildings thereon at the Land Title Office, provided however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any such claim. the Lessee shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court or otherwise satisfying the Court as to security for the claim as the Court may direct and obtaining and registering a Court Order directing cancellation of such claim. or otherwise providing security in an amount and form as the Lessor may in writing approve in order to secure cancellation and discharge of any lien. The Lessee shall at all times defend and conduct such action in a prompt and diligent manner. If the Lessee fails to promptly

discharge or cause any such lien to be discharged, or fails to conduct a diligent, prompt or bona fide dispute of same, then in addition to any other rights or remedies of the Lessor, the Lessor may, but shall not be obligated to, discharge the lien by paying the amount claimed to be due into Court or directly to the lien claimant, and the amount so paid and all costs and expenses (including legal costs on a solicitor-client basis and expenses) shall be immediately due and payable by the Lessee to the Lessor.

### **Requirements Prior to Commencing Work**

1.6 The Lessee shall, prior to commencing the Lessee's Work, provide written evidence satisfactory to the Lessor of the following

- (i) Letters of Commitment to provide funding for the Lessee's Work in an amount of \$90,000 from a Chartered Canadian Bank or evidence that it has on deposit \$90,000 cash to be applied to the Lessee's Work.
- (ii) Letters of Commitment for donations in an amount sufficient to meet the balance required to complete the construction of the enclosed Sports Centre.
- (iii) A financial statement in form satisfactory to the Lessor indicating the financial plan for the first three years of operation of the Sports Centre, which financial plan shall be subject to the approval of the Lessor's Director Recreation and Cultural Services.
- (iv) That a qualified construction management firm approved by the Lessor has been appointed to act as prime consultant and to supervise all phases of the Lessee's work, including payment of contractors and subcontractors. A construction



management plan shall be submitted to the Lessor's Planning and Building Department providing, inter alia, certification of the total cost of the project and a breakdown of each phase thereof.

If the Lessee fails to provide such evidence to the Lessor, within three months of the commencement of the Term, this Lease and the Term granted herein shall at the option of the Lessor forthwith terminate.

### **Requirements after Performance of the Work**

1.7 The Lessee shall, upon completion of the Lessee's Work:

- (a) provide the Lessor with a statutory declaration (hereinafter called the "Declaration");
  - (i) stating that the Lessee's Work has been performed in accordance with all of the provisions of the plans and specification;
  - (ii) stating that there are no builders' liens, Workers' Compensation liens or other liens or encumbrances affecting the Sports Centre or the Lands in respect of work, compensation, services or materials relating to the Lessee's Work and that all accounts for work, compensation, services and materials have been paid in full with respect to all of the Lessee's Work;
  - (iii) confirming the date on which the last such work was performed and materials were supplied;

- (b) provide to the Lessor a clearance certificate issued under the Workers' Compensation Act in respect of each contractor and sub-contractor involved in the Lessee's Work; and
- (c) obtain and provide to the Lessor a copy of every occupancy and other permit which may be required by any governmental or other regulatory authority having jurisdiction, to permit the Lessee to open for its operations.

### **PAYMENT OF RENT, TAXES AND UTILITIES**

#### **Lessee to Pay Rent**

2.1 The Lessee shall pay to the Lessor in each year, without deduction or set-off, annual rent as follows:

- (a) during the first year of the Term the sum of \$1.00 on January 1, 1997;
- (b) during each subsequent year of the Term the sum of \$30,000 payable in equal monthly instalments of \$2,500 each in advance on the first day of each and every month.

#### **Lessee to Pay Taxes on the Lands and Improvements**

2.2 In addition to the rent herein provided, the Lessee shall in each and every year during the Term and Renewal Terms not later than the day immediately preceding the date or dates on which real property taxes and other charges imposed upon real property within the City of Burnaby become due and payable whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges and assessments, including school taxes, local improvement rates and other charges which now are or shall or may

be levied, rated, charged or assessed against the Lands, the Sports Centre, all other structures, all machinery, equipment, facilities, improvements and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipality, parliamentary, legislative, regional, school or other authority during the Term and Renewal Terms.

2.3 In the event that the Lands and Sports Centre have not been entered on the tax roll or for any other reason, taxes, rates, duties, charges and assessments are not officially and formally levied then the Lessee shall pay to the Lessor the monetary equivalent of the said taxes, rates, duties, charges and assessments as if they had been officially and formally levied. The Lessee will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such taxes, rates, duties, charges and assessments; and any such losses, costs, charges and expenses suffered by the Lessor may be collected by the Lessor as rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

2.4 The Lessee further covenants and agrees that during the Term and Renewal Terms, it will deliver to the Lessor for inspection receipts for payments of all taxes, rates, duties, charges, assessments, including school taxes, local improvement rates and other charges in respect of the Lands, the Sports Centre, all other structures, all machinery, equipment, facilities, improvements and other property of any nature whatsoever thereon and therein which were due and payable during the Term and Renewal Terms within fourteen (14) days following receipt by the Lessee of each of such receipts for payments.

### **Delinquent Taxes**

2.5 If the Lessee shall in any year during the Term or Renewal Terms fail to pay the real property taxes and other charges when due, the Lessee shall thereupon pay interest at the percentage rate or rates established for unpaid real property taxes in the City of Burnaby.

### **Exemption from Taxes**

2.6 Provided that in the event that the Lessee applies for and is granted exemption from real property taxation for the whole or any part of the Lands, then the Lessee's obligations hereunder to pay real property tax is abated to the extent and duration of such exemption.

### **Payment for Utility Services**

2.7 The Lessee covenants with the Lessor to pay or cause to be paid when due all charges for gas, electricity, light, heat, power, telephone, water, waste and garbage removal and other utilities and services used in or supplied to the Lands and the Sports Centre throughout the Term and Renewal Terms and to indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

### **Business Tax and Licence Fees**

2.8 The Lessee covenants with the Lessor to pay or cause to be paid when due every tax and permit and licence fee in respect of any and every business carried on, upon or in the Lands, and the Sports Centre, in respect of the use, operations or occupancy thereof by the Lessee (and any and every sublessee, permittee, agent and licensee) whether such taxes or permit and licence fees are charged by any municipal, parliamentary, legislative, regional or other authority during the Term and Renewal Terms and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such taxes and permit and licence fees, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

## **LAWS AND BYLAWS**

3.1 The Lessee covenants to promptly and faithfully observe and comply with all laws, bylaws, regulations, statutes and lawful orders which touch and concern the Lands and the Sports Centre and the Lessee's activities within and upon the Lands and the Sports Centre.

## **USE OF LANDS AND Sports Centre**

### **Lessee's Purposes**

4.1 It is a condition of this Lease and the Lessee agrees that the Sports Centre and the Lands shall only be used for the purpose of operating a sports floor, bicycle track, sports ground, ancillary services, sports medicine clinic and administrative offices for use by the general public.

4.2 In the event that the Lessee ceases to be a registered society under the *Society Act*, Chapter 390, R.S.B.C. and amendments thereto, or ceases to be a non-profit society or ceases to observe the purposes and objects recited in Schedule "A", this Lease shall, unless such changes have been approved in advance by the Lessor's Director Recreation and Cultural Services, forthwith terminate at the option of the Lessor without any compensation to the Lessee.

### **Conditions of Operation**

4.3 The Sports Centre will be operated and maintained by the Lessee, at the sole cost and expense of the Lessee, and the Sports Centre will be used exclusively for sports and recreational purposes or directly related events and activities. In the event of any dispute between the Lessor and Lessee as to the interpretation of this clause, the opinion of the Lessor's Director Recreation and Cultural Services shall be final and binding.

4.4 Without limiting the foregoing, the Lessee will provide and allow recreational

4.4 Without limiting the foregoing, the Lessee will provide and allow recreational volleyball, cycling and competitive cycling programs, both to be available to the general public seven days a week.

4.5 The Lessee hereby grants to the Lessor's Parks and Recreation Department and any community recreation groups referred by the said Department, the exclusive right to use the infield within the Sports Centre and related facilities including the floor and related sports fixtures, washrooms, change rooms and storage rooms, up to four times a year for special events, usually on weekends, for a period not in excess of three full days for any such event, without cost to the Lessor or any such community recreation group. The Lessor shall consult with the Lessee, try to avoid any conflicts in the use of such facilities with the Lessee and its permitted users; provided that the Lessor shall have the final right to determine when it will exercise its rights under this clause.

4.6 If the Lessor recovers any user fees from any community recreation groups who obtain use of any part of the Sports Centre under clause 4.5 the Lessor shall remit the user fees, net of any costs of the Lessor, to the Lessee.

4.7 Any user fees charged by the Lessee for users that are not part of the said community recreation groups shall be subject at all times to the approval of the Lessor's Director Recreation and Cultural Services acting reasonably.

4.8 The Lessee shall not place any advertisements or commercial signs anywhere on the Lands or on or within the Sports Centre without the prior approval of the Lessor's Director Recreation and Cultural Services.

4.9 The Lessee shall not charge people for parking vehicles on the Lands without the prior consent of the Lessor's Director Recreation and Cultural Services acting reasonably. Where

such consent is granted, the amount of the parking charges and any increases thereof shall also require the prior approval of the Lessor's Director Recreation and Cultural Services.

4.10 The Lessee shall provide the Lessor with copies of its annual reports and financial statements for the operations of the Sports Centre for each year of the Term and as soon as the same are prepared.

4.11 All revenues received by the Lessee for the operation of the Sports Centre or otherwise derived from the Lands shall be applied to the maintenance and repair of the Sports Centre, the equipment used in connection with the operation of the Sports Centre and the Lands (and where necessary to the replacement of such equipment) and to the payment of rent, property taxes, utility costs and other costs reasonably incurred in the operation of the Sports Centre and the Lands. While it is the intent of the parties that the Sports Centre shall be operated on a non-profit basis by the Lessee, any incidental profit realized from the operation of the Sports Centre or otherwise derived from the Lands from time to time shall be used by the Lessee to support volleyball in British Columbia. If the Lessee creates a foundation for this purpose the constitution or other documents creating the foundation and any annual reports and financial statements relating to it shall be provided to the Lessor.

## **INSURANCE**

5.1 At all times during the Term and Renewal Terms the Lessee shall obtain and maintain, at the Lessee's cost and expense, with an insurance company authorized and licensed to carry on business and having an office in British Columbia and in a policy or policies of insurance acceptable to and approved in writing by the Lessor, the following insurance:

(a) **Comprehensive General Liability**

Comprehensive general liability insurance, including non-owned automobile liability insurance, against claims arising out of bodily injury and/or death to persons and from loss or damage to, or destruction of the property of others (including the property of the Lessor) and for loss of use thereof, indemnifying and protecting the Lessor and the Lessee for the minimum limits set forth below. The said comprehensive general liability insurance shall apply to all operations of the Lessee of every kind and description pertaining in any way to the Lessee's operations and the activities of all persons in the Sports Centre and on the Lands and without limiting the foregoing, shall agree to pay all sums which it may become liable to pay, by reason of liability imposed by law or assumed under any agreement relating to the Lessee's operations for bodily injury or death to persons and property damage (including property of the Lessor), including loss of use thereof, arising out of the use and/or occupancy of the Sports Centre, all operations of every kind and description, including those of subcontractors, non-owned automobiles, use and/or consumption of products. The minimum limits referred to above are:

- (i) bodily injury to or death of one or more persons in any one occurrence - Two Million (\$2,000,000) Dollars and
- (ii) loss or damage to property, including loss of use thereof in any one occurrence -Two Million (\$2,000,000) Dollars.

The said minimum limits may, on a reasonable basis, be changed or amended from time to time by the Lessor.

The said liability policy shall bear an endorsement to the effect that the Lessor is added as a named insured on the policy and that a cross-liability clause



is in effect protecting the rights and interests of the named insureds as if a separate policy had been issued in respect of each.

The Lessee will at the time of execution of this Lease file with the Lessor certified copies of all such policy or policies of insurance and the receipts for payment of premiums thereon, and should the Lessee neglect so to obtain and/or maintain in force any such insurance as aforesaid or deliver such policy or policies and receipts to the Lessor then it shall be lawful for the Lessor to obtain and/or maintain such insurance and the Lessee hereby appoints the Lessor its true and lawful attorney to do all things necessary for this purpose. All moneys expended by the Lessor for insurance premiums under the provisions of this clause shall be charged to the Lessee and may be collected by the Lessor as rent with all the rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

Where the Lessee rents or permits other groups to use the Sports Centre or any other part of the Lands the Lessee shall ensure that each such group has in force at all times during such use liability insurance coverage which meets the requirements of this clause 5.1 in all respects.

### **Workers' Compensation**

5.2 The Lessee shall forthwith furnish to the Lessor satisfactory proof that the Lessee has been determined and is then admitted by the Workers' Compensation Board to be an employer within the scope of Part I of the *Workers' Compensation Act*, R.S.B.C. 1979 Chapter 437, as from time to time amended.

### **Fire Insurance and Pressure Vessel Insurance**

5.3 At all times during the Term and Renewal Terms the Lessee shall, at its own cost and expense, insure and keep insured or cause to be insured and kept insured the Sports Centre and any other buildings or structures on the Lands in an amount satisfactory to the Lessor in one or more companies entitled to do business in the Province of British Columbia against loss or damage by fire and other perils now or hereafter from time to time embraced by or defined in the Commercial Building form of insurance coverage applicable to similar properties as the Lands and the Sports Centre in effect in the Province of British Columbia by prudent owners from time to time including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosions, wind storm, cyclone, tornado, hail, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage, to the extent that insurance against such risk or peril, or any of them, may be obtained in an amount equal to the full replacement value thereof.

At all times during the Term and the Renewal Terms the Lessee shall at its own cost and expense maintain in respect of the Sports Centre or any other buildings or structures on the Lands pressure vessel insurance with one or more companies entitled to do business in the Province of British Columbia protecting the Lessor and the Lessee in respect of all boilers and such other pressure vessels as the Lessor or the Lessee may from time to time deem it necessary to insure in amounts to be designated by the Lessee and approved by the Lessor, such insurance shall also cover loss or damage caused by rupture of steam pipes.

### **Identity of Insured**

5.4 Any and all policies of insurance covering the Sports Centre and any other buildings or structures on the Lands shall be written in the name of the Lessee as the insured with loss payable to the Lessee and the Lessor as their respective interests may appear, subject to the provisions of this Lease. Each policy of insurance shall contain a provision or shall bear an endorsement that the insurer will not cancel any policy or make a material change or allow any

policy to expire, without first giving the Lessor at least thirty (30) days' notice in writing of its intention to cancel by return registered mail.

### **Payment of Insurance Premium**

5.5 The Lessee shall pay all the premiums under the policies of insurance referred to herein as they become due and payable and in default of payment by the Lessee the Lessor may pay same and the Lessee shall forthwith reimburse the Lessor such sums which shall be deemed to be rent and as such the Lessor may collect same as rent in arrears and shall have all rights of distress and otherwise for the collection of same.

### **Copies of Insurance Policies**

5.6 Certified copies of all policies of insurance referred to herein shall be delivered to the Lessor accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid.

### **Fire and Liability Insurance During Construction of Buildings**

5.7 The Lessee shall effect or shall cause its contractor or contractors to effect prior to the commencement of the Lessee's Work and shall maintain and keep in force until the insurance hereinbefore required shall have been effected, insurance:

- (i) protecting both the Lessee, the Lessor and their servants and agents (without any rights of cross claim or subrogation against the Lessor or its servants or agents) against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including the risks occasioned by the Lessee's Work and to an amount reasonably satisfactory to the lessor for any bodily injury, death, property or other claims; and

- (ii) protecting both the Lessee and the Lessor from loss or damage (without any rights of cross claim or subrogation against the Lessor or its servants or agents) to the Sports Centre, any other buildings or structures on the Lands, and all fixtures, equipment, improvements and building materials on the Lands from time to time to the full replacement value thereof both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Sports Centre and any other buildings or structures on the Lands against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times).

### **Waivers of Subrogation**

5.8 All insurance policies herein shall contain a waiver or waivers of subrogation against the Lessor.

## **REPAIRS AND MAINTENANCE**

### **Removal of Ice and Snow from Sidewalks**

6.1 The Lessee shall keep all parking lots, driveways and sidewalks on the Lands and adjacent thereto reasonably free from ice and snow in accordance with the provisions of the Burnaby Street and Traffic Bylaw and amendments thereto and re-enactments thereof, and failing that, the Lessor, although not obliged to do so, may through its agents, servants, contractors and subcontractors remove such ice and snow at the expense of the Lessee but without notice to the Lessee.

### **Repair of Buildings**

6.2 The Lessee shall at all times throughout the Term and Renewal Terms place and keep the Lands and the interior and exterior of the Sports Centre and any other buildings and structures on the Lands in a safe, clean and sanitary condition and in good and substantial repair as would a reasonable and prudent owner of same. The Lessee shall observe all health regulations and take any necessary measures for the extermination and control of pests, vermin and infestation. The Lessor may enter and view the state of cleanliness and repair.

### **Maintenance of Floor and Equipment**

6.3 The Lessee shall maintain and repair the sports surface floor of the Sports Centre and equipment in the Sports Centre in accordance with the manufacturers' recommendations.

## **DAMAGE OR DESTRUCTION**

### **Repair of Sports Centre**

7.1 If the Sports Centre is partially or substantially or completely destroyed, the Lessee shall either:

- (i) forthwith proceed to diligently replace or repair the Sports Centre and all equipment and other property of any nature whatsoever that was thereon and therein at the time of such destruction, and such repair or replacement shall be to a standard equivalent to the condition of the Sports Centre and such other property at the time of such destruction, or
- (ii) elect to treat the Lease as terminated, in which case there shall be no compensation or other payment by the Lessor to the Lessee. It is understood and agreed that in

this event the Lessor shall be entitled to receive, in priority to any amounts due to the Lessee, sufficient proceeds from insurance coverage to remove any debris and rubbish to make the Lands safe and to restore the Lands to its state and condition immediately prior to the execution of this Lease.

## **INDEMNIFICATION**

### **Indemnification of Lessor**

**8.1** In addition to all other provisions herein the Lessee covenants with the Lessor that the Lessee shall indemnify and save harmless the Lessor and its servants and agents from all costs, losses, damages, builders' and other liens, compensation and expenses of any nature whatever relating to or arising from the Lessee's enjoyment, occupation of or possession of the Lands and the Sports Centre and any other buildings or structures on the Lands, and the Lessee's operations and from all actions, claims, demands, suits and judgments against the Lessor or its servants and agents on account of injury or death to any persons or animals, or damage to or loss of property occurring in or about the Lands and the Sports Centre and any other buildings or structures on the Lands or relating to or arising from the Lessee's occupation, possession or use of the Lands and Sports Centre and the Lessee's operations.

### **Assumption of Risk**

**8.2** The Lessee assumes all risks in any way arising from the Lessee's use, occupation, possession or enjoyment of the Lands and the Sports Centre and any other buildings or structures on the Lands.

## **WASTE AND NUISANCE**

### **Lessee Not to Commit Waste**

9.1 The Lessee shall not suffer, cause or permit the commission of permissive, voluntary or equitable waste to the Lands or the Sports Centre.

### **Lessee Not to Commit Nuisance**

9.2 The Lessee shall not suffer, cause or permit any nuisance on the Lands or Sports Centre.

## **ASSIGNING AND SUBLETTING**

### **Subletting by Lessee**

10.1 The Lessee shall not nor will during the Term or Renewal Terms sublease or part with possession of the Lands, the Sports Centre or any part thereof to any person, persons or corporation whatsoever without the prior consent in writing of the Lessor upon approval of the Council of the Lessor, which consent the Lessor may arbitrarily withhold.

### **Assignment by Lessee**

10.2 The Lessee shall not nor will during the Term or Renewal Terms, either by act or by deed, assign, transfer, bargain or sell this Lease, the Lands or the Sports Centre to any person, persons or corporation whatsoever without the consent in writing of the Lessor which consent the Lessor may arbitrarily withhold. In any event it is agreed that the Lessor shall withhold its consent if, in the Lessor's opinion, the prospective assignee does not have sufficient experience, capabilities or financial resources to operate the Sports Centre in accordance with the terms of this

Lease. Provided that any permitted assigns of the Lessee shall, concurrent with such assignment, acknowledge to being bound by all the terms and conditions of this Lease and in pursuance whereof shall execute such documents and instruments as shall be required by the Lessor.

## **DEFAULT BY LESSEE**

### **Re-entry on Certain Defaults by Lessee**

11.1 The Lessor and the Lessee agree that if:

- (a) the Lessee shall default in the payment of rent or taxes or any other sums required to be paid to the Lessor or any other party by any provision of this Lease, and such default shall continue for twenty (20) days after notice in writing thereof given by the Lessor to the Lessee; or
- (b) the Lessee shall default in performing or observing any of its other covenants, conditions or obligations under this Lease, or any contingency shall occur which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit or terminate this Lease, and the Lessor shall have given to the Lessee notice of such default or the happening of such contingency, and at the expiration of twenty (20) days after the giving of such notice the default or contingency shall continue to exist, or in the case of a default which cannot with due diligence be cured within the period of twenty (20) days aforesaid, such extended period as is specified by the Lessor, the Lessee fails to proceed promptly after the giving of notice to cure such default or contingency and to prosecute same to completion with reasonable diligence; or
- (c) this Lease shall expire or be terminated by any other provision in it contained;



the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the Lands and the Sports Centre without being liable to any prosecution or damages therefor, and may repossess and enjoy the Lands, the Sports Centre and all fixtures and improvements upon the Lands and the Sports Centre without such re-entry and repossession operating as a forfeiture or waiver of the rent or any other sums required to be paid by the Lessee to the Lessor, and the covenants to be performed by the Lessee to the Lessor, and the covenants to be performed by the Lessee to the Lessor, and the covenants to be performed by the Lessee up to the date of such re-entry and repossession. The Term or Renewal Term shall immediately become forfeited and cease and determine and these presents thereupon shall be void and of no further force or effect either at law or in equity save and except in respect to any moneys or other indebtedness due or owing by the Lessee to the Lessor at such time and save and except for any rights or remedies against the Lessee which rights and remedies shall survive the Lease in favour of the Lessor.

#### **Bankruptcy and Judgments Against the Lessee**

11.2 The Lessee covenants with the Lessor that if the Term hereby granted or any Renewal Term shall be at any time seized or taken in execution or in attachment by any creditor or creditors of the Lessee or its assigns, or if the Lessee or its assigns shall make any assignment for the benefit of creditors or becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, or if the Lessee shall enter into receivership whether voluntarily or involuntarily or if a receiver or trustee in bankruptcy is appointed over some or all of the affairs of the Lessee, the Term or any Renewal Term shall immediately become forfeited, and the Term shall immediately cease and determine and become forfeited and void and these presents thereupon shall be void and of no further force or effect either at law or in equity save and except in respect to any moneys or other indebtedness due or owing by the Lessee to the Lessor at such time and save and except for any rights or remedies against the Lessee which rights and remedies shall survive this Lease in favour of the Lessor.

### **Condonation of Breach Not a Waiver**

11.3 It is mutually agreed that any excusing, condoning or forbearance by the Lessor in respect of any default, breach or non-observance by the Lessee at any time of any covenant, provision, condition or requirement in this Lease shall not operate as a waiver of the Lessor's rights hereunder in respect of any subsequent default, breach or non-observance of the terms of this Lease and shall not defeat or affect in any way the Lessor's rights in respect of any such subsequent default or breach.

### **Remedies of Lessor are Cumulative**

11.4 The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies of the Lessor at law or in equity. No remedy shall be deemed to be exclusive, and the Lessor may from time to time have recourse to one or more of all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease, the Lessor shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements hereof.

## **SURRENDER OF LEASE**

### **Showing of Lands and Buildings**

12.1 At any time during the last twelve (12) months of the Term, or Renewal Terms if applicable, or if the Lessee is holding over, then at any time during such holding over, the Lessor may show the Lands and Sports Centre during normal business hours to agents of the Lessor and to prospective purchasers or tenants and their agents and advisors.

12.2 At the end of the Term or Renewal Terms if applicable, either by forfeiture, default or lapse of time, the Lessee shall surrender the Lands and the Sports Centre to the Lessor without

compensation or further consideration from the Lessor. Upon such surrender the lessee shall assign to the lessor the benefit of all sub-leases, licences, assignments and other agreements and rights affecting the Lands or the Sports Centre or the Lessee's interest therein.

### **Vacant Possession**

12.3 Upon termination of the Term or Renewal Terms if applicable, hereby granted, whether by effluxion of time or otherwise, the Lessee shall peaceably surrender and deliver up vacant possession of the Lands and the Sports Centre and shall leave the Lands and the Sports Centre in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish, and in the state of repair required hereunder. The Lessee shall not cause any damage to the Sports Centre in removing any objects therefrom.

### **Overholding**

12.4 If the Lessee shall hold over after the expiration of the Term or Renewal Terms if applicable, whether by effluxion of time or otherwise, the new tenancy thereby created shall be a tenancy from month to month and not from year to year, and shall be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month and the rent then payable shall be one twelfth of the then annual rental market value of the Lands and Sports Centre as determined from time to time by the Lessor.

## **LESSEE'S COVENANTS SURVIVE TERMINATION**

13.1 The covenants, provisos and conditions herein on the part of the Lessee which, as of termination of this Lease whether by effluxion of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding shall notwithstanding termination of this Lease continue in full force and effect and be binding upon the Lessee until such covenants, provisos and conditions are discharged or satisfied in full.

## QUIET ENJOYMENT

### Covenant for Quiet Enjoyment

14.1 If the Lessee pays the rent hereby reserved, the property taxes and other charges, and performs the covenants and conditions herein on the Lessee's part contained, the Lessee shall and may peaceably enjoy and possess the Lands and Sports Centre for the Term and Renewal Terms if applicable, without any interruption or disturbance from the Lessor or any third party lawfully claiming from or under the Lessor, subject always to the terms and conditions hereof.

## RIGHTS OF LESSOR AND LESSEE

15.1 All rights and benefits and all obligations of the Lessor and the Lessee under this Lease shall be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease.

## NOTICE

16.1 All notices, demands and requests which may be or are required to be given pursuant to this Lease shall be in writing and shall be sufficiently given if served personally upon the party or an executive officer of the party for whom it is intended or mailed prepaid and registered, in the case of the Lessor addressed to:

City Clerk  
City of Burnaby  
4949 Canada Way  
Burnaby, B.C. V5G 1M2

and in the case of the Lessee addressed to:

B.C. Volleyball Association  
#405 - 1367 West Broadway  
Vancouver, B.C. V6H 4A9

or at such other addresses as the parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand or request shall be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid, on the third business day next following the date of such mailing PROVIDED HOWEVER that if mailed should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down or postal services or other labour dispute which affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered.

### MISCELLANEOUS

17.1 Time shall be of the essence of this Lease save as herein otherwise specified.

17.2 This Lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the Lessor and the Lessee or by the successors or assigns of the Lessor and the successors or permitted assigns of the Lessee.

17.3 This Lease shall not be registered in the Land Title Office and the Lessee waives any right to further documentation from the Lessor.

17.4 The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained herein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

17.5 Words herein importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse whenever the context requires: also these presents shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and permitted assigns of the

respective parties hereto. Reference herein to the Lessor and the Lessee shall be deemed to include the servants, agents, contractors, subcontractors, licences and invitees wherever the context requires.

**IN WITNESS WHEREOF** the Lessor and the Lessee have caused these presents to be signed under the hands of their proper officers in that behalf as of the day and year first above written.

THE CORPORATE SEAL OF THE CITY  
OF BURNABY WAS HEREUNTO AFFIXED  
IN THE PRESENCE OF:

\_\_\_\_\_  
City Clerk

THE COMMON SEAL OF B.C. VOLLEYBALL  
ASSOCIATION WAS HEREUNTO AFFIXED  
IN THE PRESENCE OF:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory