

CITY OF BURNABY

BYLAW NO. 10965

A BYLAW to authorize the granting of a lease of certain City owned property to D.B. Perks & Associates Ltd.

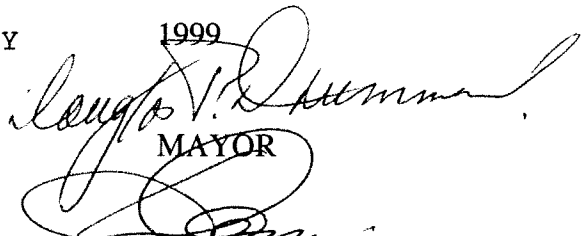
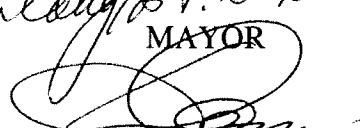
The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY LEASE AUTHORIZATION BYLAW NO. 5, 1999.**

2. The Council is hereby authorized and empowered to lease a part of City owned property legally described as Lot 72, District Lots 152 and 153, Group 1, New Westminster District, Plan 46976 to D.B. Perks & Associates Ltd. as more particularly described in and in the form of lease hereunto annexed as Schedule "A" (hereinafter called the "said lease").

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	28 th	day of	JUNE	1999
Read a second time this	28 th	day of	JUNE	1999
Read a third time this	28 th	day of	JUNE	1999
Reconsidered and adopted this	12 th	day of	JULY	1999


MAYOR

CLERK

SCHEDULE "A"

THIS AGREEMENT made the 17th day of June 1999

BETWEEN:

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

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

D.B. PERKS & ASSOCIATES LTD.
201-1305 Welch Street
North Vancouver, B.C. V7P 1B3

(hereinafter called the "Lessee")

OF THE SECOND PART

WHEREAS the Lessor is the owner of those lands and premises more particularly described as:

Lot 72, District Lots 152 and 153, Group 1, N.W.D., Plan 46976

and commonly known as the Bonsor Recreation Complex (hereinafter called the "Complex");

AND WHEREAS the Lessor issued a request for proposals to operate a pro shop on leased premises within the Complex;

AND WHEREAS the Lessee submitted a proposal in response to the request (hereinafter called the "Proposal");

NOW THEREFORE in consideration of the premises herein contained, the parties hereto agree as follows:

1. 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 unto the Lessee and the Lessee does hereby take and rent upon and subject to the conditions hereinafter expressed, that area comprising 224 square feet more or less (hereinafter called the "Leased Area") located on the main floor of the Complex outlined in red on plan attached hereto as Schedule I, TO HAVE AND TO HOLD the Leased Area for and during the term of three (3) years commencing on the **15th day of June, 1999** and ending on June 14, 2002 (hereinafter called the "Term") YIELDING AND PAYING to the Lessor for the Term, rent as follows:

- (a) basic monthly rental payments of NINE HUNDRED DOLLARS (\$900.00) each, in advance on the first day of each and every month during the Term, commencing upon the earlier of:
 - (i) the opening of the pro shop for business; or
 - (ii) August 1, 1999; and

- (b) percentage rent equal to FIVE PERCENT (5%) of the Lessee's net sales income, calculated monthly, and payable on or before the 15th day of each month based on the previous calendar month's net sales income.

The phrase "net sales income" means all revenues less G.S.T. and P.S.T. received by the Lessee resulting from sales from its business carried on from the Leased Area.

Each payment of percentage rent shall be accompanied by a written statement of the previous month's net sales income signed by a director or officer of the Lessee.

Within ninety (90) days after the end of each lease year, the Lessee shall provide the Lessor with a report of the financial operation, verified by the Lessee and prepared by an accountant setting out the amount of the net sales income for such year and to substantiate all sales

transactions by cash register audit tape totals.. Any adjustments to actual payments of percentage rent made during that lease year shall be made at that time.

The Lessee hereby agrees that it will keep at the Leased Area separate accounting records relating to the net sales income of business carried on at the Leased Area. Such records shall consist of an accurate record of all sales and all other revenue derived from the business and include such other supporting or ancillary sales slips, cash register tapes, receipts and other sales records so as to enable an audit of the statement of net sales income to be conducted. Such records shall be available for the inspection and audit of the Lessor and its agents at all reasonable times during ordinary business hours. The Lessee agrees to keep, retain, preserve, and make available to the Lessor for at least twelve (12) months after the delivery of the annual audited statement all such records. The Lessee acknowledged that, notwithstanding the delivery to the Lessor of the annual audited statement and the acceptance of such statement and percentage rental shown to be payable thereby, the Lessor may at its instance cause an independent audit to be undertaken.

All rent required to be paid by the Lessee hereunder shall be paid without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that all expenses, costs, payments and outgoing incurred in respect of the Leased Area and other improvements on the Leased Area or for any other matter or thing affecting the Leased Area, shall (unless otherwise expressly stipulated herein to the contrary) be borne by the Lessee, and that the rent herein provided shall be absolutely net to the City and free of all abatements, set-offs or deductions.

The Lessee shall pay any G.S.T. that is payable on the rent or other payments hereunder.

2. In addition to the rent the Lessee will, in each and every year during the Term, 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 Leased Area, all other structures, all machinery, equipment, facilities, 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.

In the event that the Complex or the Leased Area 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 are available to the Lessor in respect of rent in arrears.

3. The Lessee shall throughout the Term operate a pro shop selling sporting wear and goods from the Leased Area and for that purpose the Lessee, its servants and agents shall have full licence and liberty to enter upon and shall be entitled to full ingress and egress through the common areas of the Complex to the Leased Area between the hours of 6:00 a.m. and 2:00 a.m. on those days when the Complex is open for business and at other times by prior written permission of the Lessor.

4. The Lessee shall be open for business between the hours of 9:30 a.m. and 8:30 p.m. Monday to Friday and Sunday and from 9:30 a.m. to 5:30 p.m. on Saturdays on each day the Complex is open to the public. The Lessor and Lessee may by mutual agreement change the hours of operation. The Lessee shall sell only first line quality new goods at reasonable prices. No second hand or damaged goods shall be sold from the Leased Area. The Lessor, acting reasonably, shall be entitled to prohibit the sale of particular products.

The Lessor covenants and agrees that during the Term and any renewal thereof, the Lessee shall have the exclusive right to use the Leased Area for the business of a retail swim and sporting goods outlet and that no similar business may be conducted by any other party in the Complex except that annual, provincial or national swimming, diving, synchronized swimming or water polo events may sell commemorative swim apparel and accessories bearing the event logo (such as t-shirts) during such events. This covenant is for the benefit of the Leased Area and shall be a burden upon and shall run with the lands.

5. If the Lessee has duly and regularly paid the rent and all other sums owing to the Lessor from time to time and performed each and every of the covenants, provisos and agreements herein on the part of the Lessee to be paid and performed, the Lessor will at the expiration of the Term at the written request of the Lessee mailed by registered post to or delivered to the Lessor not later than ninety (90) days prior to the expiry of the Term, grant to the Lessee a renewal of this Lease for a further term (hereinafter called the "Renewal Term") of three (3) years on the same terms and conditions as this Lease save and except as follows:

- (a) the rent for the Renewal Term shall be the fair market rental for the Leased Area as agreed between the parties or, failing agreement between the parties by the commencement of the Renewal Term, as determined by arbitration under the *Commercial Arbitration Act*;
- (b) there shall be no right of renewal.

6. The Lessee shall:

- (a) provide and pay for all goods, materials and equipment used in the operation of its business;
- (b) employ and pay an adequate staff for the purpose of serving the public in the operation of its business;

- (c) ensure that all staff are courteous, clean, presentable and suitably attired;
- (d) ensure that the Leased Area is maintained in a safe condition;
- (e) provide, pay for and maintain all tenant improvements necessary to commence and carry on its business from the Leased Area. The standard, quality and design of the tenant improvements shall be subject to the prior approval of the Lessor and shall be carried out in accordance with all applicable Burnaby bylaw and other lawful requirements;
- (f) pay for telephone and any other communication services provided to the Leased Area;
- (g) comply with all laws applicable to the Leased Area or the Lessee's occupation and use thereof;
- (h) sell its goods and merchandise at reasonable prices as approved by the Lessor's Director Parks, Recreation and Cultural Services;
- (i) maintain at all times the Leased Area in a clean and sanitary condition (including windows, carpets, linoleum, walls and counters).
- (j) be responsible for the security of the Leased Area and the cash, goods and equipment therein and thereon;
- (k) pay rent and all other sums payable to the Lessor under this Lease at the times and in the manner herein provided;
- (l) not carry on any other business from the Leased Area.

7. The Lessee confirms and authorizes the Lessor at any time to conduct and obtain a credit check or financial information with respect to the Lessee and to conduct any related enquiries therein.

8. The Lessor shall conduct an annual performance standards review of the Lessee's operations. The Lessee shall use its best efforts to rectify any deficiencies noted in its operations. The Lessee shall respond to any customer service comments or complaints in a timely and courteous manner.

9. The Lessor shall provide light, power, heat and waste removal from an outside container.

10. The Lessee shall be deemed to be an independent contractor and in no sense a servant or agent of the Lessor and the Lessor shall in no manner be responsible for the debts and liabilities of the Lessee.

11. The Lessee shall indemnify and hold harmless the Lessor, its elected officials, officers, employees and agents, and its successors and assigns, from and against any and all claims in connection with any personal or bodily injury to any loss or damage to property:

- (a) arising from or out of this Lease, or from any alterations to the Leased Area, or from any occurrence in, upon, or at the Leased Area, or from the occupancy or use by Lessee of the Leased Area, or any part thereof, or occasioned wholly or in part by any fault, default, negligence, act or omission of the Lessee or by any person permitted to be in or on the Leased Area by the Lessee; and
- (b) arising from, relating to or occurring in, upon or at any part of the Complex (other than the Leased Area) occasioned in whole or in part by any fault, default, negligence, act or omission by the Lessee or any of the directors, officers, servants, employees, contractors, agents, invitees and licensees of the Lessee and all other

persons over whom the Lessee

- (i) may reasonably be expected to exercise control, and
- (ii) is in law responsible.

If the Lessor is made a party to any litigation commenced by or against the Lessee, then the Lessee shall promptly indemnify and hold harmless the Lessor and shall pay the Lessor all costs and expenses, including, without limitation, any professional, consultant and legal fees (on a solicitor and his own client basis) that may be incurred or paid by or on behalf of the Lessor in connection with such litigation on demand.

The Lessor may, at its option, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing or any other matter for which the Lessee is required to indemnify the Lessor under this Lease. Alternatively, the Lessor may require the Lessee at the Lessee's expense to assume carriage of and responsibility for all or any part of such litigation or discussions, subject to the Lessee at all times keeping the Lessor informed in writing as to the status thereof. Without limiting the generality of the foregoing, the Lessee shall also pay the Lessor, on demand, all costs and expenses including, without limitation, any professional, consultant, and legal fees (on a solicitor and his own client basis) that may be incurred or paid by or on behalf of the Lessor in enforcing the terms and conditions of this Lease.

12. The Lessee assumes all risk of injury (including death) to any person or damage to or loss of any property whatsoever in any way arising out of or in connection with this Lease or anything done or omitted to be done by the Lessee its servants, employees, licensees or agents or the Lessor its servants, employees, licensees or agents.

13. The Lessee shall, during the currency of this Lease, maintain coverage and pay such assessments as will protect it and the Lessor from claims under Workers' Compensation Acts which may arise from its operations under this Lease.

14. The Lessee shall, at its own cost, maintain throughout the Term, the Renewal Term and any period when it is in possession of all or any portion of the Leased Area, all of the insurance described below and shall deliver to the Lessor at the commencement of the Term and at least annually thereafter, certificates of insurance in a form acceptable to the Lessor or, if required by the Lessor, certified copies of the insurance policies. The insurance shall be as follows:

- (i) "all risks" (including flood and earthquake) property insurance on insurable property owned or operated by the Lessee or by others (other than the Lessor) on behalf of the Lessee in the Leased Area or relating to or serving the Leased Area, with reasonable deductibles. This insurance shall:
 - (a) name both the Lessee and Lessor as insureds;
 - (b) contain a waiver of subrogation rights against the Lessor whether the loss or damage is caused by the fault, default, act, omission or negligence of the Lessor or those for whom the Lessor is in law responsible;
 - (c) cover all property owned by the Lessee or for which the Lessee is legally liable located on or about the Leased Area or other property belonging to the Lessor, including but not limited to, the Lessee's improvements, in an amount not less than the full replacement cost thereof, including a bylaw endorsement;
- (ii) Three Million (\$3,000,000) Dollars inclusive limits occurrence form commercial general liability insurance. This insurance shall include:
 - (a) products, completed operations, intentional acts to protect persons or property, personal and bodily injury (including death), voluntary medical payments, employers and blanket contractual liability coverage, provisions

for cross liability, severability of interests, occurrence property damage, and;

- (b) the Lessor as additional insured;
- (iii) Three Million (\$3,000,000) Dollars inclusive limits automobile liability insurance on a non-owned form, including contractual liability, and on an owner's form, covering all licensed vehicles operated by or on behalf of the Lessee; and
- (iv) Any other insurance and whatever higher limits the Lessor might reasonably require from time to time.

The Lessee shall cause each such policy of insurance to:

- (a) be primary, non-contributing with, and not excess of any other insurance available to the Lessor;
- (b) contain an endorsement prohibiting cancellation or material change in coverage without thirty (30) days' prior notice in writing to the Lessor by registered mail;
- (c) contain a waiver, where the Lessor is an insured, in respect of the interests of the Lessor of any provision in any such insurance policies with respect to any breach or violation of any warranties, representations, declarations or conditions in such policies; and
- (d) be in a form and with such insurers as are reasonably satisfactory to the Lessor.

In the event that the Lessor and the Lessee have claims to be indemnified under any such insurance the indemnity shall be applied first to the settlement of the claim of the Lessor and the balance, if any, to the settlement of the claim of the Lessee.

If, for any reason, the Lessee does not obtain any of the insurance required hereunder then the Lessor may, without assuming any obligation and without prejudice to any other rights or remedies available under this Lease, effect any such insurance required at the sole cost of the Lessee and any expense incurred by the Lessor shall be due and payable immediately to the Lessor and collectable as rent.

15. If the Lessee shall fail to pay rent within five (5) business days of the date upon which it was due, or if the Lessee shall make default in the performance and observance of any other of the terms, covenants and conditions in this Lease contained and shall fail to remedy such default upon ten (10) business days notice from the Lessor, or if the Lessee shall make any assignment for the benefit of creditors to becoming bankrupt or insolvent shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, or if a Receiver or Trustee in Bankruptcy is appointed for the affairs of the Lessee, the Lessor may thereupon cancel and determine this Lease without prejudice to any other remedies that are available to the Lessor in this Lease or otherwise.

16. The Lessee shall not assign or otherwise transfer this Lease or sublet or part with possession of all or any part of the Leased Area without the prior consent in writing of the Lessor, such consent not to be unreasonably withheld.

20. In the event of a civic strike or lockout resulting in the closure of the Complex the payment of rent shall cease over the period of the said strike or lockout and the Term shall be extended by the period of the said strike or lockout.

21. Except to the extent that it is inconsistent or in conflict with anything herein contained, the Proposal shall be deemed to form a part hereof.

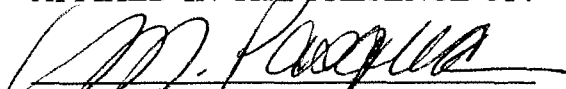
22. Upon the expiration or earlier termination of the Term or the Renewal Term, the Lessee will not cause damage to the structure of the Leased Area when removing moveable items upon vacating the Leased Area.

23. The Lessor shall not be required to provide this Lease in a form acceptable for registration in the Land Title Office.

24. This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have executed these presents 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 - Authorized Signatory

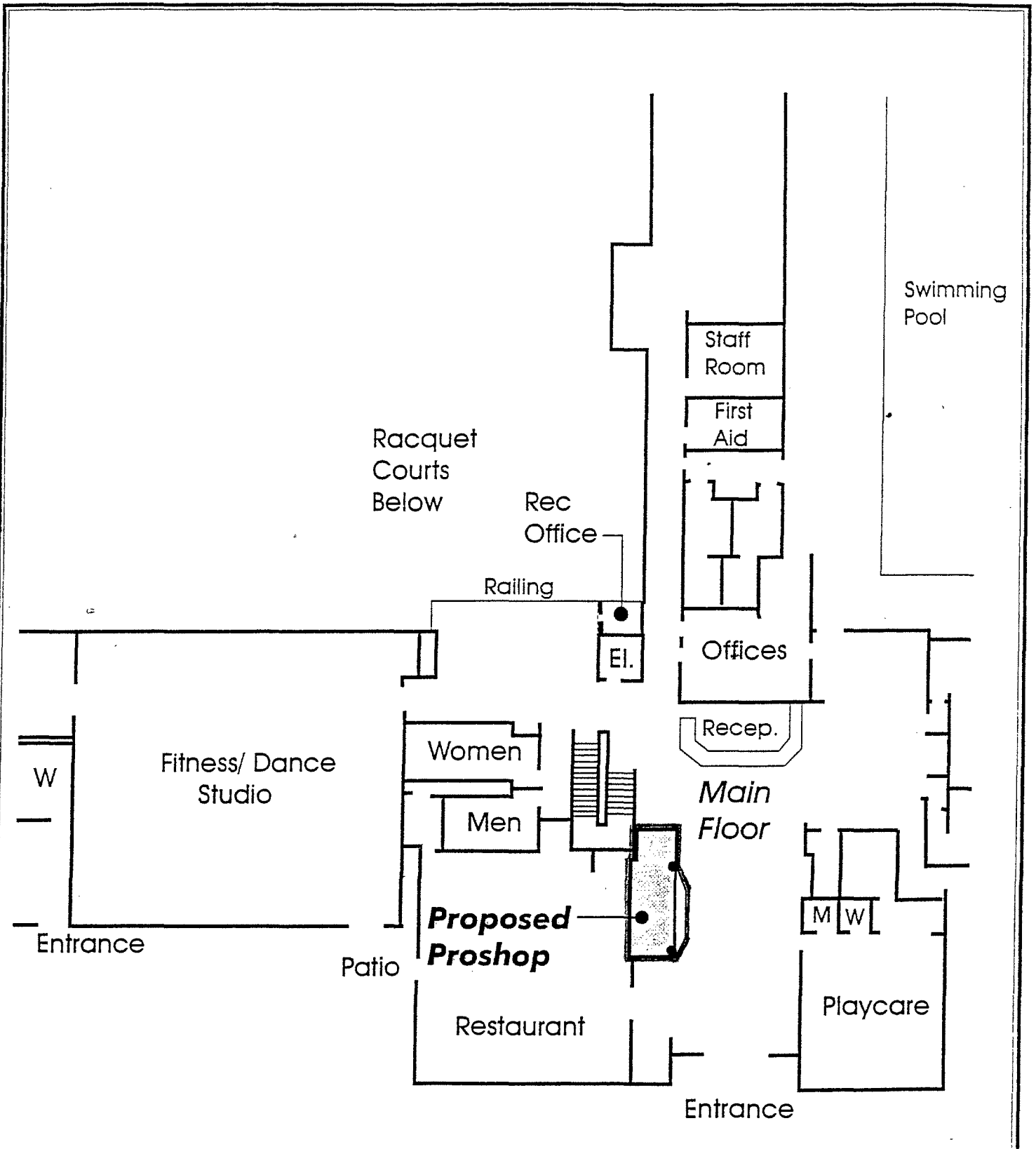
Maryann I. Pasqua
DEPUTY CITY CLERK

THE CORPORATE SEAL OF D.B. PERKS
& ASSOCIATES LTD. WAS HEREUNTO
AFFIXED IN THE PRESENCE OF:



Authorized Signatory

SCHEDULE I



*Bonsor Recreation Complex
Commercial Proshop Location*

Dwg.# O.P. 31-3-116s
Date: Oct. 1998
Scale: nts
Prepared By: HD