

THE CORPORATION OF THE DISTRICT OF BURNABY

BYLAW NO. 8550

A BYLAW to authorize the granting of a lease
of certain municipally owned lands to
NINTENDO ENTERTAINMENT CENTRES LTD.

The Council of The Corporation of the District of
Burnaby ENACTS as follows:

1. This Bylaw may be cited as BURNABY LEASE AUTHORIZATION
BYLAW NO. 2, 1986.

2. The Council is hereby authorized and empowered to demise
and lease unto Nintendo Entertainment Centres Ltd., upon the
terms, covenants and conditions more particularly set forth in the
form of INDENTURE hereunto attached and marked Schedule "A", those
municipally owned lands and premises more particularly described
as ALL AND SINGULAR that certain parcel or tract of land and
premises situate, lying and being in the Municipality of Burnaby,
Province of British Columbia, and more particularly known and
described as:

Commencing at a point in the said Block 1 perpendicularly
distant on a bearing of $359^{\circ} 54' 00''$ a distance of 21.915
metres from a point in the southerly boundary of the said
Lot 1, which latter point lies 123.441 metres on a bearing
of $89^{\circ} 54' 00''$ from the southwest corner of the said Lot;

thence $324^{\circ} 55' 35''$ a distance of 42.190 metres;

thence $54^{\circ} 55' 35''$ a distance of 47.854 metres;

thence $144^{\circ} 55' 35''$ a distance of 59.259 metres;

thence $190^{\circ} 24' 55''$ a distance of 21.946 metres;

thence $280^{\circ} 08' 45''$ a distance of 45.720 metres, more

or less, to the point of commencement.

The herein-described parcel contains 0.293 hectare, more or less, and is shown on plan prepared by B.S. Berting, B.C.L.S. and dated the 4th day of March, 1986, a copy of which plan is attached hereto and marked "A" (hereinafter called "the demised premises").

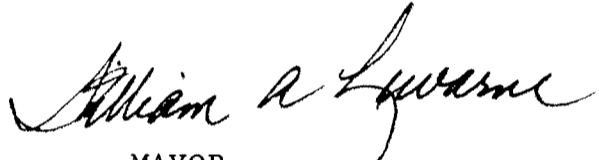
3. The Municipal Clerk is hereby authorized and empowered to execute the said lease, signing the same and affixing the corporate seal thereto.

Read a first time this 1st day of APRIL 19 86

Read a second time this 1st day of APRIL 19 86

Read a third time this 1st day of APRIL 19 86

Reconsidered and adopted this 7th day of APRIL 19 86


MAYOR


CLERK

SCHEDULE "A"

THIS INDENTURE dated the day of 1986

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY
a municipal corporation duly incorporated
under the laws of the Province of British
British Columbia, with offices at
4949 Canada Way, Burnaby, B.C. V5G 1M2

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

NINTENDO ENTERTAINMENT CENTRES LTD.
9898 Government Place
Burnaby, B.C. V3J 1N6

(hereinafter called "the Lessee")

OF THE SECOND PART

WHEREAS the Lessor is the owner in fee simple of ALL AND SINGULAR that certain parcel or tract of land and premises, including the building known as the Burnaby Centennial Pavilion Restaurant (hereinafter called the "building"), situate, lying and being in the Municipality of Burnaby, Province of British Columbia, composed of all that portion of Block 1, District Lot 214, Group 1, Plan 3081, New Westminster District, which may be more particularly described as follows:

Commencing at a point in the said Block 1 perpendicularly distant on a bearing of 359° 54' 00" a distance of 21.915 metres from a point in the southerly boundary of the said Lot 1, which latter point lies 123.441 metres on a bearing of 89° 54' 00" from the southwest corner of the said Lot;

thence 324° 55' 35" a distance of 42.190 metres;
thence 54° 55' 35" a distance of 47.854 metres;
thence 144° 55' 35" a distance of 59.259 metres;
thence 190° 24' 55" a distance of 21.946 metres;
thence 280° 08' 45" a distance of 45.720 metres, more or less, to the point of commencement.

The herein-described parcel contains 0.293 hectare, more or less, and is shown on plan prepared by B.S. Berting, B.C.L.S. and dated the 4th day of March, 1986, a copy of which plan is attached hereto and marked "A" (hereinafter called "the demised premises").

AND WHEREAS the Lessee has submitted a proposal for the renovation and operation of a restaurant at the demised premises in response to the Lessor's request for proposals;

NOW THEREFORE THIS AGREEMENT WITNESSETH:

DEMISE

1. The Lessor, subject to the terms, covenants and conditions hereof, doth hereby lease and demise to the Lessee the demised premises for the purpose of operating in the building a restaurant, including a bar and a refreshment and souvenir stand.

TERM

2. TO HAVE AND TO HOLD the demised premises for and during the term commencing on the day of the execution hereof by the Lessor and expiring on the day immediately preceding the fifth anniversary of the date for commencement of rent.

In this Agreement "the date for commencement of rent" means one hundred fifty (150) days after the issuing of a building permit to complete the renovations pursuant to Clause 15 or the first day the restaurant is open for business, whichever first occurs.

RENT

3. The Lessee will yield and pay to the Lessor basic rent for the term in the sum of two hundred five thousand dollars (\$205,000) payable without any deductions, defalcations or abatements on any account whatsoever, and whether demanded or not, in advance in instalments every four (4) weeks as follows:

- (a) during years one and two the sum of twenty-five thousand dollars (\$25,000) per annum in instalments of one thousand nine hundred twenty-three dollars and seven cents (\$1,923.07);
- (b) during year three the sum of thirty-five thousand dollars (\$35,000) per annum in instalments of two thousand six hundred ninety-two dollars and thirty cents (\$2,692.30);
- (c) during years four and five the sum of sixty thousand dollars (\$60,000) per annum in instalments of four thousand six hundred fifteen dollars and thirty-eight cents (\$4,615.38);

commencing on the date for commencement of rent and thereafter on the first day of every four (4) week period during the term.

4. (1) The Lessee agrees that annually on or before the date that is thirty (30) days after the Lessee's fiscal year-end it shall submit to the Lessor a written statement for the preceding fiscal year, or a portion thereof commencing on the date for commencement of rent, which statement shall be prepared and signed by a chartered accountant or a certified general accountant licensed to practise that profession pursuant to the laws of the Province of British Columbia or an accountant with equivalent designation licensed to practise in the State of Washington in the United States of America and shall:

- (i) be certified by its author;
- (ii) itemize all revenues derived from the operation of the demised premises;
- (iii) separately itemize all revenue derived from the sale of alcoholic beverages;
- (iv) separately itemize all sales tax remitted to the Government of the Province of British Columbia;
- (v) separately itemize all meal taxes remitted to the Government of the Province of British Columbia;
- (vi) separately itemize meals provided to staff members.

(2) The Lessee agrees to deliver to the Lessor every four weeks during the term a sales report in the Lessee's standard form disclosing gross income for the preceding four weeks.

(3) The Lessee agrees to keep suitable books properly maintained so as to reflect the true and correct view of the income of the restaurant, bar and refreshment and souvenir stand and of the sales effected thereby and to permit such books at all reasonable times to be open to the inspection of and for audit by the Lessor's Director Finance or any person duly authorized to act on his behalf.

(4) Except for the purposes of proving claims against the Lessee or issuing statements on the equities between the Lessor and Lessee when requested by the Lessee or when made necessary by proceedings taken by any of the Lessee's creditors or insurers, the Lessor covenants to keep confidential all information received from the Lessee pursuant to Clause 4(1) and Clause 4(2) so far as such information is not customarily disclosed as a feature of the Lessor's annual budget.

5. NET LEASE. 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 outgoings incurred in respect of the demised premises or for any other matter or thing affecting the demised premises, shall, unless otherwise expressly stipulated herein to the contrary, be borne by the Lessee, that the rent herein provided shall be absolutely net to the Lessor and free of all abatements, set-off or deduction of real property taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the demised premises and that the Lessee shall pay or cause to be paid all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings.

6. COLLECTION OF OTHER AMOUNTS DUE. Any sums, costs, expenses or other moneys from time to time due and payable by the Lessee to the Lessor under the provisions of this lease, including sums payable by way of indemnity and whether expressed to be rent or not in this lease, may at the option of the Lessor be treated as and deemed to be additional rent, in which event the Lessor shall have all the remedies for the collections of such sums, costs, expenses or other amounts, when in arrears, as are available to the Lessor for the collection of rent in arrears.

7. INTEREST ON AMOUNTS IN ARREARS. When the basic rent, additional rent or any other amount payable hereunder by the Lessee to the Lessor shall be in arrears, such amount shall bear interest at the rate of three percent (3%) per annum above the average monthly chartered bank rate on prime business loans as computed by the Bank of Canada until paid, and the Lessor shall have all the remedies for the collection of such interest, if unpaid after demand, as in the case of rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedy of the Lessor under this lease.

OPTION TO RENEW

8. (1) The Lessor covenants with the Lessee that if the Lessee duly and regularly pays the basic rent, the additional rent and all other sums owing to the Lessor from time to time and performs all 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 Lessor's election either pay the Lessee the sum of six hundred seventy-five thousand dollars (\$675,000) or grant to the Lessee a renewal lease of the demised premises for a further term of five years on the same terms and conditions as this lease save and except as follows:

- (i) Clause 15 shall not apply;
- (ii) The renewal lease shall not contain any further right of renewal;
- (iii) The yearly rent for the renewal term shall be four percent (4%) of gross income with a minimum yearly rent of sixty thousand dollars (\$60,000) and a maximum yearly rent of seventy-eight thousand dollars (\$78,000);

PROVIDED THAT the Lessor will give the Lessee written notice of its election hereunder not later than ninety (90) days prior to the end of the term and the Lessor's failure to deliver notice of election as aforesaid shall be deemed an election to grant the Lessee a renewal lease;

AND FURTHER PROVIDED THAT the Lessor gives no warranty or undertaking, express or implied, as to its power to grant this option to renew.

(2) The parties agree that in this Agreement "gross income" means all moneys derived from the operation of the restaurant, bar, and the refreshment and souvenir stand, excluding the following:

- sales taxes and meal taxes that the Lessee collects as an agent for the Government of the Province of British Columbia,
- income from meals provided to staff members and promotional meals,
- income from the sale of alcoholic beverages,
- refunds to patrons and suppliers,
- gratuities from patrons.

(3) During the renewal term, if any, the Lessee will yield and pay to the Lessor basic rent of three hundred thousand dollars (\$300,000) in equal instalments, in advance, of four thousand six hundred fifteen dollars and thirty-eight cents (\$4,615.38) on the first day of each four (4) week period during the renewal term without deductions, defalcations or abatements on any account whatsoever and whether demanded or not.

In addition to the basic rent, the Lessee shall pay for each fifty-two (52) week period, as rent, additional rent which shall be the amount by which four percent (4%) of the gross income exceeds sixty thousand dollars (\$60,000) with a maximum additional rent for each fifty-two (52) week period of eighteen thousand dollars (\$18,000). The additional rent shall be paid no later than thirty (30) days following the end of each fifty-two (52) week period of the renewal term.

PAYMENT OF TAXES

9. In addition to the basic rent herein provided, the Lessee will in each and every year during the term not later than the day that real property taxes and other charges imposed upon real property in Burnaby become due and payable, 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 demised premises whether such taxes, rates, duties, charges and assessments are charged by any municipality, parliamentary, legislative, regional, school or other authority during the term 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, rates, duties, charges and assessments; and any such losses, costs, charges and expenses suffered by the Lessor may be collected by the Lessor as additional rent with all rights of distress and otherwise as reserved by the Lessor in respect of rent in arrears. The Lessee shall have the right from time to time to appeal any assessment of the demised premises or any other tax, rate, duty, charge or amount referred to in this clause 9, provided that such appeal shall be at the sole cost and expense of the Lessee. If the Lessee is unable to appeal any assessment of the demised premises, or any other tax, rate, duty, charge or amount referred to in this clause 9 except in the name of the Lessor, then the Lessee shall have the right to appear in the name of the Lessor.

The Lessor shall ensure that a copy of the real property assessment notice is sent to the Lessee prior to the date for filing appeals therefrom.

Notwithstanding anything herein contained, the Lessee shall be responsible for the payments referred to in this clause

9 commencing on the date for commencement of rent and only for that portion of any year in which this lease is in effect, such adjustment to be made on a per diem basis.

10. UTILITIES AND SERVICES. 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 and other utilities and services used in or supplied to the demised premises, excluding the public washrooms, throughout the term 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 additional rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

11. BUSINESS TAX, PERMITS. 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 demised premises in respect of the use or occupancy thereof by the Lessee (and any and every sublessee, permittee and licensee) other than such taxes as corporation income, profits and excess profit taxes assessed upon the income of the Lessee (or such sublessee, permittee 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 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 additional rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

USE OF DEMISED PREMISES

12. The Lessee covenants to promptly and faithfully observe and comply with all laws, bylaws and lawful orders that touch and concern the demised premises or the Lessee's activities within and upon the demised premises.

13. It is a condition of this lease and the Lessee agrees that the demised premises shall only be used for the purpose of operating a public restaurant, a bar and a refreshment and souvenir stand servicing the general public and private functions.

14. It is a condition of this lease and the Lessee agrees that:

- (i) The Public Health Inspector or any other regulatory body may submit copies of any reports respecting the demised premises to the Lessor;
- (ii) The Lessee shall not sell any alcoholic beverages unless licensed so to do by the Liquor Administration Board of the Province of British Columbia and only then in strict compliance with all terms and conditions set by the Board for such service;
- (iii) Unless the Lessor gives its written consent, the Lessee may only hold from the Liquor Administration Board of the Province of British Columbia a restaurant liquor licence;
- (iv) Unless the Lessor gives its written consent, the Lessee's operations shall be conducted wholly within the confines of the demised premises;
- (v) The Lessee shall provide a selection of food items designed to serve the needs of casual park users and available at the refreshment stand and within the building.

RENOVATION

15. It is a condition of this lease and the Lessee agrees that as of the commencement of the term the Lessee shall forthwith undertake wholly at its expense the renovation and extension of the building on the demised premises at a total cost of not less than six hundred sixty thousand dollars (\$660,000) substantially in accordance with the plans for such work attached hereto and marked "B", subject to approval by the building inspector and municipal authorities having jurisdiction. There shall be no substantial deviation from such plans unless the Lessor's Director Recreation and Cultural Services consents in writing to such deviation or the changes are required by the building inspector or other authority having jurisdiction. The Lessee shall use its reasonable best efforts to wholly complete the work no later than the date for commencement of rent. Save and except as aforesaid the Lessee shall not build, erect, construct, place or maintain or cause, suffer or permit to be built, erected, constructed, placed or maintained any alterations in the structure, plan or partitioning of the buildings and the Lessee shall not install any plumbing, piping, wiring or heating apparatus or equipment without the written approval of the Lessor's Director to the plans and specifications for such work, such approval not to be unreasonably withheld, and the Lessee agrees to strictly adhere to such plans and specifications wholly at its own expense.

16. RENT PRIOR TO DATE FOR COMMENCEMENT OF RENT. Notwithstanding anything in this lease to the contrary, the Lessee shall not transact business with the general public prior to the date for commencement of rent unless the Lessor's Director has specifically approved thereof in writing and as a condition of giving such approval the said Director may require the Lessee to pay further rent which further rent shall not be a credit on account of the rent payable pursuant to Clause 3 hereof, nor

shall such further rent be a credit on account of any other moneys due the Lessor by this lease. If the Lessee is in breach of this clause the parties agree that for each day on which a breach occurs the Lessee shall pay to the Lessor the sum of one hundred dollars (\$100.00) which sum is due and owing as of the day on which such breach occurs.

17. UNAVOIDABLE DELAYS. If, by reason of strike, lockout or other labour dispute, material or labour shortage, fire or explosion, flood, wind, water, earthquake, Act of God or other similar circumstance beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the commencement of construction or completion of construction or repair of the buildings which under the terms of this lease the Lessee is required to do by a specified date or within a specified time, the date or period of time in which the work was to have been completed shall be extended by the Lessor by a reasonable period at least equal to that of such delay or prevention and the Lessee shall not be deemed to be in default if it performs or completes the work in the manner required by the terms of this lease within such extended period of time, or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee.

PUBLIC WASHROOMS

18. The Lessee shall during its normal hours of operation allow the general public to use without charge the washrooms accessible from the outside at the north of the buildings and the Lessor, at its expense, shall keep and maintain same in a neat, clean and good condition, and in good repair, and shall pay all utilities and other expenses related to their use. The Lessor shall indemnify the Lessee in respect of all claims arising out of the use of the said washrooms.

INSURANCE

19. At all times during the term and any renewal thereof the Lessee shall obtain and maintain in force, at the Lessee's cost and expense, in an insurance company authorized and licensed to carry on business and having an office in British Columbia and in a policy of insurance acceptance to and approved in writing by the Lessor, the following insurance:

(i) Motor Vehicle Liability Insurance

Motor vehicle liability insurance for bodily injury and death to persons and for property damage with the minimum limits as set forth below in respect of all motor vehicles owned by the Lessee in connection with the operation of the demised premises. The minimum limits referred to above are:

Bodily injury to, or death of one or more persons, arising out of any one occurrence.)	\$1,000,000 inclusive
Property damage (including loss of use thereof) arising out of any one occurrence.)	

(ii) Third Party Liability Insurance

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, 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 (including construction and/or renovation works) pertaining in any way to the operation described in this lease, and without limiting the foregoing, shall agree to pay on behalf of the Lessee all sums which it

may become liable to pay, by reason of liability imposed by law or assumed under any agreement relating to the said operation 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 building, 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:

- (1) Bodily injury to or death of any one person in any one occurrence, one million dollars (\$1,000,000), and
- (2) Bodily injury to or death of two or more persons in any one occurrence, one million dollars (\$1,000,000), and
- (3) Loss or damage to property, including loss of use thereof in any one occurrence, one million dollars (\$1,000,000).

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.

Each such policy shall provide that no cancellation, expiration or material change in the policy shall become effective until after thirty (30) days' notice of such cancellation, expiration or change shall have been given to the Lessor by return registered mail, and the Lessee will at the time of execution of this Agreement 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 his true and lawful attorney to do all things necessary for this purpose. All monies expended by the Lessor for insurance premiums under the provisions of this clause shall be charged to the Lessee.

To 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, and that in the event of the Lessee's failure to furnish such proof, the Lessor shall have the right to terminate this Agreement forthwith.

19A. FIRE AND LIABILITY INSURANCE DURING CONSTRUCTION OF BUILDINGS.

(a) The Lessee shall effect or shall cause its contractor or contractors to effect prior to the commencement of renovations to the buildings upon the demised premises, 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 the Lessor's 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 said lands and from any cause, including the risks occasioned by the construction of the buildings, and to an amount reasonably satisfactory to the Lessor for any bodily injury,

death, property or other claims in respect of any one accident or occurrence;

- (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 buildings and all fixtures, equipment, improvements and building materials on the demised premises from time to time during construction (which may be by policies effected from time to time covering the risk during different phases of construction of the buildings 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 and in any event in an amount sufficient to prevent the Lessor or the Lessee being deemed a co-insurer.

REPAIRS AND MAINTENANCE

20. The Lessee will throughout the term and any extension or renewal thereof, clean, maintain and repair and keep in repair in a good and substantial manner the interior of the demised premises when, where and so often as need may be, reasonable wear and tear excepted, and the Lessee will repair any and all damage caused by the failure of the Lessee or his or their employees, agents or independent contractors to use the demised premises and all additions or alterations thereto and all chattels and fixtures hereby demised or now or hereafter erected or placed in or on the demised premises in a good tenant like manner and in

accordance with the covenants, terms and conditions of this lease; and more specifically the Lessee will clean the windows inside and out and will replace all broken window panes and will maintain the heating and air conditioning systems; PROVIDED THAT the Lessor will carry out the horticultural maintenance of the grounds including but not limited to mowing grass, edge trimming, planting and care of flower beds and shrubs, cleanup of leaves, watering and fertilizing; AND FURTHER PROVIDED THAT the Lessor will maintain the roof, exterior repairs and exterior painting after renovations are complete and will replace the furnace and air conditioning unit if the Lessor deems replacement to be necessary.

21. The Lessee will at its own expense ensure that the interior of the demised premises and all additions or alterations thereto are, throughout the term, decorated in a manner suitable for a restaurant located in a public park and catering to families.

22. The Lessor and its or their employees, agents or independent contractors may at all reasonable times during the term hereby granted enter into and upon the demised premises to examine the conditions thereof; and further, that all wants of repair, cleaning or maintenance which upon such views may be found which the Lessee is liable to remedy and for the amendment of which notice in writing is given to the Lessee, the Lessee will, within thirty (30) days next after every such notice, well and sufficiently repair and make good accordingly.

23. If the Lessee fails to clean, maintain or to repair or to keep the demised premises in repair as provided for in or by virtue of this lease, the Lessor or its or their employees, agents and independent contractors may at the option of the Lessor, upon thirty (30) days' written notice referred to in Clause 22, enter

into and upon the demised premises and execute such repairs and the reasonable costs and expenses incurred in effecting such repairs will be a debt due from the Lessee to the Lessor and will be forthwith recoverable by action provided that such entry will not constitute a re-entry by the Lessor for breach of covenant and that the remedy given by this clause is in addition to and not in substitution for the other remedies that the Lessor has for breach of covenant and further provided that the Lessee will not be entitled to compensation for any inconvenience, nuisance, or discomfort occasioned by the exercise of the Lessor's rights granted by this Clause 23.

24. The Lessee shall keep the sidewalks adjacent to the demised premises 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.

25. The Lessee will at the expiration or other determination of the term hereby demised peaceably surrender and yield up unto the Lessor the demised premises and appurtenances, together with all buildings, structures and fixtures now or hereafter erected or placed thereon in good and substantial repair and condition in all respects except only for reasonable wear and tear or damage which the Lessee is not made liable to repair by or by virtue of this lease. Provided, however, that the trade fixtures and equipment which may be installed in the demised premises prior to or during the term hereof at the cost of the Lessee, shall remain personal property and shall not be deemed to become part of the demised premises if the Lessee shall notify the Director within thirty (30) days prior to termination or expiration of this lease of the trade fixtures or equipment he intends to remove. The Lessee shall within a period of fifteen (15) days after the termination of this lease or any extension thereof remove from the demised premises any trade fixtures or equipment of the Lessee and any

such trade fixtures and equipment which are not removed within the said fifteen (15) days, shall be deemed to be abandoned and shall become the property of the Lessor. The Lessee shall make good all damage to the premises caused by the removal of trade fixtures and equipment and shall replace doors and windows to the satisfaction of the Director.

For the purposes of the preceding paragraph trade fixtures and equipment shall mean moveable property of the Lessee, bar and equipment, draperies and rugs.

BUILDERS' LIENS

26. The Lessee shall, throughout the term at its own cost and expense, cause any and all builders' liens and other liens for labour, services or material alleged to have been furnished with respect to the demised premises, which may be registered against or otherwise affect the demised premises to be paid, satisfied, released or vacated within forty-two (42) days after the Lessor has sent to the Lessee written notice by registered mail of any claim for any such lien, 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.

DAMAGE OR DESTRUCTION

27. If during the term or any extension or renewal thereof the building on the demised premises or any part thereof are totally or substantially destroyed or damaged so as to be totally

or partially unfit for the purpose described in this Agreement, the following provisions shall apply:

- (i) For such time as the said building is rendered partially unfit for the purpose described in this Agreement, as a result of such damage, the rent hereby reserved, but not including taxes, will abate in proportion that the part of the said building rendered unfit for the purpose described in this Agreement is of the whole of the area of the said building. If the said building is rendered wholly unfit for occupancy by the Lessee, the rent hereby reserved, but not including taxes, will be suspended until the said building has been rebuilt and repaired or restored.
- (ii) If the said building is incapable of being rebuilt, repaired or restored with reasonable diligence within one hundred eighty (180) days of the commencement of the work or rebuilding, repairing or restoring then either the Lessor or Lessee may terminate this Agreement by notice in writing to the other party given within thirty (30) days of the date it receives notice of the damage and on the giving of such notice this Agreement will terminate. The Lessee will, forthwith after receipt of such notice surrender the demised premises and the building and all interest therein to the Lessor, the rent will be apportioned and will be payable by the Lessee only to the date of the damage and the Lessor may re-enter and repossess the demised premises and the building discharged of this Agreement. If within the said period of thirty (30) days neither party gives notice terminating this Agreement or if within that period it agrees not to give such notice, then upon the expiration of the thirty (30) days or upon a date agreed between the Lessee and the Lessor, whichever is the earlier, the

Lessor will with reasonable promptness proceed to repair or restore the said building and the rent hereby reserved will be suspended until the said building has been rebuilt and repaired, or restored.

- (iii) If the said building is capable with reasonable diligence of being rebuilt, repaired or restored within one hundred eighty (180) days of the commencement of the work of rebuilding, repairing or restoring, then the Lessor will forthwith upon receipt of notice of such damage, proceed to rebuild, repair or restore the said building with reasonable promptness within the aforesaid one hundred eighty (180) days plus any periods of delay caused by strikes, lock-outs, slow-downs, shortages of material, acts of God, acts of war, inclement weather or other occurrences which are beyond the reasonable control of the Lessor, and the rent will abate in the manner provided for in sub-paragraph (i) of clause 27 of this Agreement until the building has been rebuilt, repaired or restored.

Provided, however, that nothing in this clause contained will in any way be deemed to affect the obligation of the Lessee to repair, maintain, replace or rebuild the said building, as provided by the terms of this Agreement.

INDEMNIFICATION

28. Subject to Clause 18, 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' liens, compensation and expenses of any nature whatever relating to or arising from the Lessee's occupation of or possession of the demised premises and from all actions, claims, demands, suits and judgments against the Lessor or its servants and agents on account of injury, death or damage to or

loss of property occurring in or about the demised premises or relating to or arising from the Lessee's occupation or possession of the demised premises provided however the Lessee's covenant to indemnify and save harmless the Lessor shall apply to the extent that such loss, damage, injury or death is not caused by negligence on the part of the Lessor or its servants or agents.

WASTE

29. The Lessee shall not suffer, cause or permit the commission of permissive, voluntary or equitable waste to the said lands or the buildings.

ASSIGNING AND SUBLETTING

30. SUBLETTING BY LESSEE. The Lessee shall not nor will during the term sublease the demised premises or any part thereof to any person, persons or corporation whatsoever without the consent in writing of the Lessor which consent the Lessor may arbitrarily withhold.

31. ASSIGNMENT BY LESSEE. The Lessee shall not nor will during the term, either by act or by deed, assign, transfer, bargain or sell this lease, the demised premises to any person, persons or corporation whatsoever without the consent in writing of the Lessor which consent the Lessor shall not unreasonably withhold PROVIDED HOWEVER it shall be reasonable for the Lessor to withhold its consent if in the Lessor's bona fide opinion the prospective assignee does not have sufficient experience in the restaurant business or does not have the financial strength to properly operate the demised premises in accordance with the terms of this lease.

DEFAULT BY LESSEE

32. RE-ENTRY ON CERTAIN DEFAULTS BY LESSEE. The Lessor and the Lessee agree that if:

- (a) the Lessee shall default in the payment of basic rent, additional rent or taxes or any other sums required to be paid to the Lessor by any provision of this lease, and such default continues for twenty (20) days after notice thereof given by the Lessor to the Lessee; or
- (b) the Lessee shall default in performing or observing any of its other covenants 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 thirty (30) 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 thirty (30) days aforesaid, the Lessee fails to proceed promptly after the giving of such 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 demised premises without being liable to any prosecution or damages therefor, and may repossess and enjoy the demised premises and all fixtures and improvements except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the buildings or the demised premises, as liquidated damages without such re-entry and repossession working a forfeiture or waiver of the rents to be paid and the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

33. REMEDIES OF LESSOR ARE CUMULATIVE. The remedies of the Lessor specified in this lease are cumulative and are in addition to any remedies of the Lessor at law or 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

34. SHOWING OF DEMISED PREMISES. At any time during the last six (6) months of the term, or a renewal term, if any, or at any time if the Lessee is holding over, as the case may be, the Lessor may advertise in the newspapers and may show the demised premises during normal business hours to agents of the Lessor and to prospective purchasers or tenants and their agents and advisors.

35. SURRENDER OF LEASE. Subject to Clause 8(1), at the end of the term, either by forfeiture, default or lapse of time, the Lessee shall surrender the demised premises 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 leases, licences, agreements and other agreements and rights benefiting the demised premises or the Lessee's interest therein, if and to the extent that the Lessor shall require such benefits to be so assigned, and if and to the extent the same are assignable.

36. VACANT POSSESSION. Upon termination of the term hereby granted, whether by effluxion of time or otherwise, the Lessee shall deliver up vacant possession of the demised premises

and shall leave the demised premises in a sanitary, neat, tidy, safe and empty condition (reasonable wear and tear excepted) free from all nuisance, debris, rubbish, stock in trade and in the state of repair required hereunder.

37. OVERHOLDING. If the Lessee shall hold over after the expiration of the term, whether by forfeiture, 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 tenancy from month to month and the rent then payable shall be one-twelfth of the then annual rental market value of the demised premises as agreed between the parties together with one-twelfth of the annual municipal taxes. If the annual rental market value of the demised premises cannot be agreed between the parties, it shall be submitted to arbitration pursuant to the Arbitration Act.

38. TRADE FIXTURES. Upon termination of the term hereby granted, whether by effluxion of time or otherwise, the Lessee may remove its trade fixtures provided that it shall repair any damage thereby caused. If the Lessee neglects or refuses to remove its trade fixtures as of termination of the term the Lessor may store or remove and store same at the Lessee's expense and repair any damage so caused at the Lessee's expense and the Lessor shall have a lien against the trade fixtures for the full amount of such expenses; if the Lessee has not paid in full any bill for such expenses within thirty (30) days of delivery thereof to the Lessee the Lessor may elect that the trade fixtures are the absolute property of the Lessor or the Lessor may elect to sell the trade fixtures at whatever price may be obtained and any surplus after deducting the costs of repairs, cartage, sales commissions and any other expenses incurred in removing and selling the trade fixtures shall be paid to the

Lessee, subject to any other rights of set off which the Lessor may enjoy.

39. LESSEE'S COVENANTS SURVIVE TERMINATION. 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

40. If the Lessee pays the rent hereby reserved and the other charges, and performs the covenants herein on the Lessee's part contained, the Lessee shall and may peaceably enjoy and possess the demised premises for the term without any interruption or disturbance whatsoever from the Lessor or any third party lawfully claiming from or under the Lessor, subject always to the terms and conditions hereof.

40A. The Lessor acknowledges that parking for the demised premises will be provided on a non-exclusive basis in the public parking area adjoining the demised premises and that the Lessor will remain responsible for the maintenance of the parking area.

The Lessor agrees to allow the Lessee to post a sign in conformance with Burnaby Sign Bylaw advertising the restaurant to be operated within the demised premises.

41. The Lessee covenants with the Lessor that if the term hereby granted shall be at any time seized or taken in execution or in attachment by any creditor or creditors of the Lessee or his assigns, or if the Lessee or his 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, the then current monthly rent shall immediately become forfeited, and the said term shall immediately become forfeited, and the said 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 due or owing by the Lessee to the Lessor at such time.

42. NOTICE. All notices, demands and requests that may 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:

Director Recreation and Cultural Services
4949 Canada Way
Burnaby, B.C. V5G 1M2

and in the case of the Lessee addressed to:

Nintendo Entertainment Centres Ltd.
9898 Government Place
Burnaby, B.C. V3J 1N6

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 second 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 of postal service or other labour dispute that affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered.

43. 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.

44. The captions and headings throughout this lease are for convenience of reference only and the words and phrases contained therein 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.

45. 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; and these presents shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

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

THE CORPORATE SEAL OF THE CORPORATION
OF THE DISTRICT OF BURNABY WAS HEREUNTO
AFFIXED IN THE PRESENCE OF:

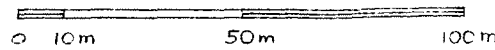
Municipal Clerk-Authorized Signatory

THE CORPORATE SEAL OF NINTENDO
ENTERTAINMENT CENTRES LTD. WAS HEREUNTO
AFFIXED IN THE PRESENCE OF:

Authorized Signatory

SKETCH SHOWING LOCATION OF LEASE
IN RELATION TO BLOCK 1, PLAN 3081,
D.L. 214, GP. I, N.W.D.

Scale - 1:1000



Distances are in metres and decimals.
Bearings are astronomic and are derived from plan 3081.

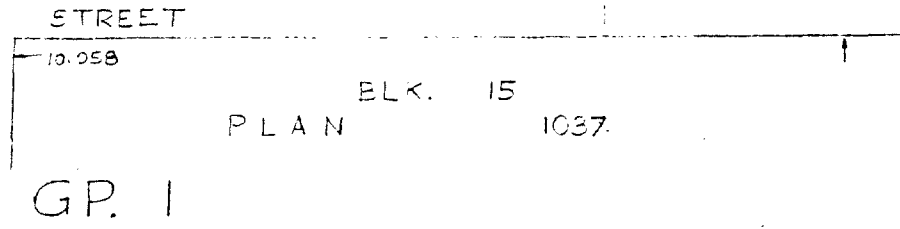
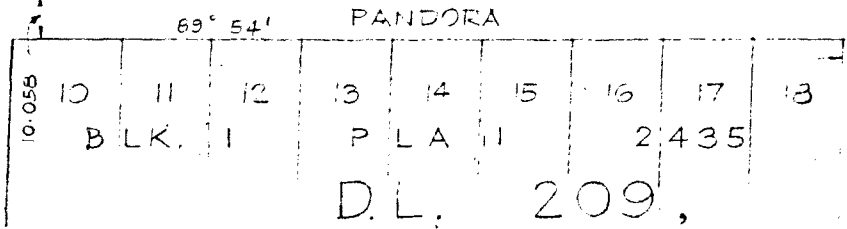
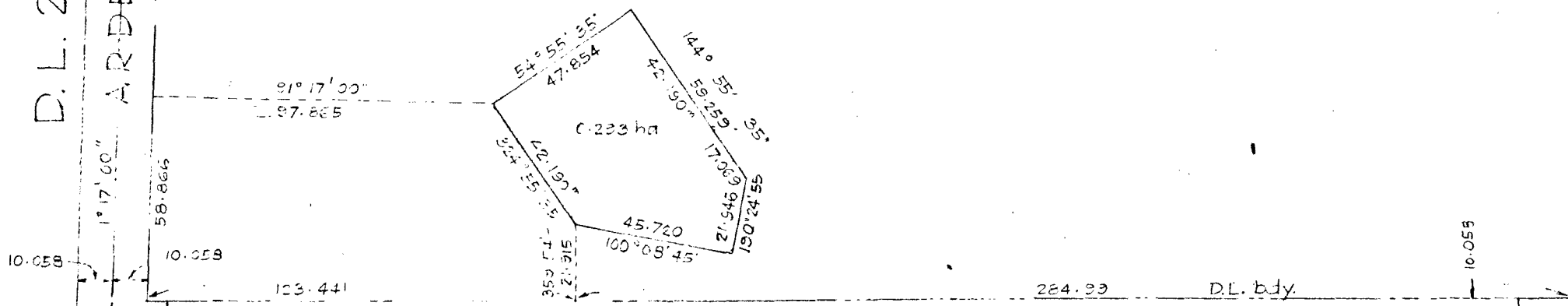


D.L. 214, GP. I, N.W.D.
LCT 1, PLAN 3081

D.L. 215, GP. I

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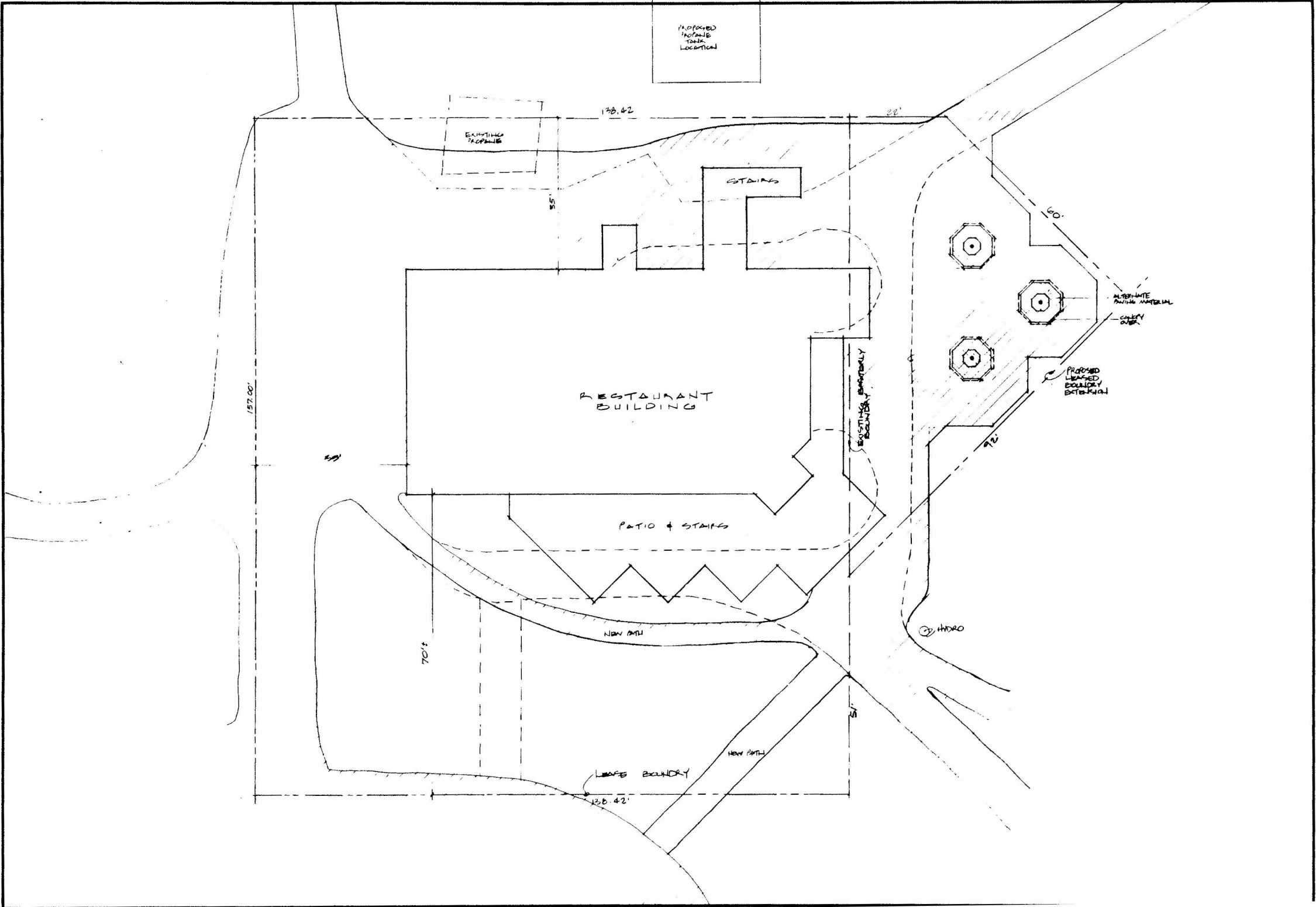
The Corporation of the District of Burnaby,
Design Division, Engineering Department,
4949 Canada Way, Burnaby, B.C.

File: 860902

Certified correct this 4th day of March 1986.

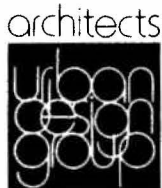
Robert King
B.C.L.S.

18



NO.	DATE	DESCRIPTION
1	1/26/06	CONCEPT PLAN
2	1/26/06	CONCEPT PLAN
3	1/26/06	CONCEPT PLAN
4	1/26/06	CONCEPT PLAN
5	1/26/06	CONCEPT PLAN
6	1/26/06	CONCEPT PLAN
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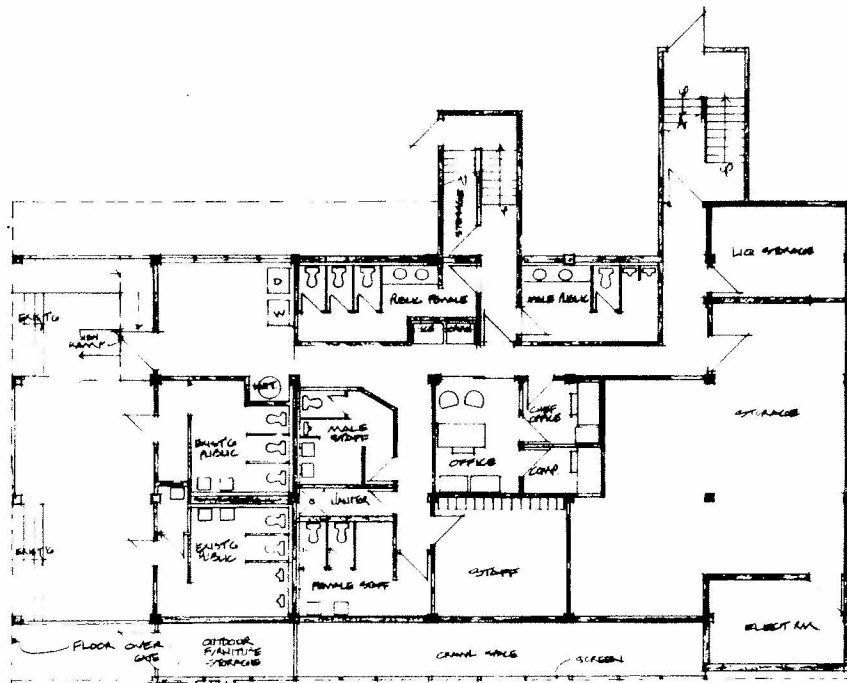
PAVILION RESTAURANT
BURNABY MOUNTAIN
NINTENDO
 Entertainment Centres Ltd.



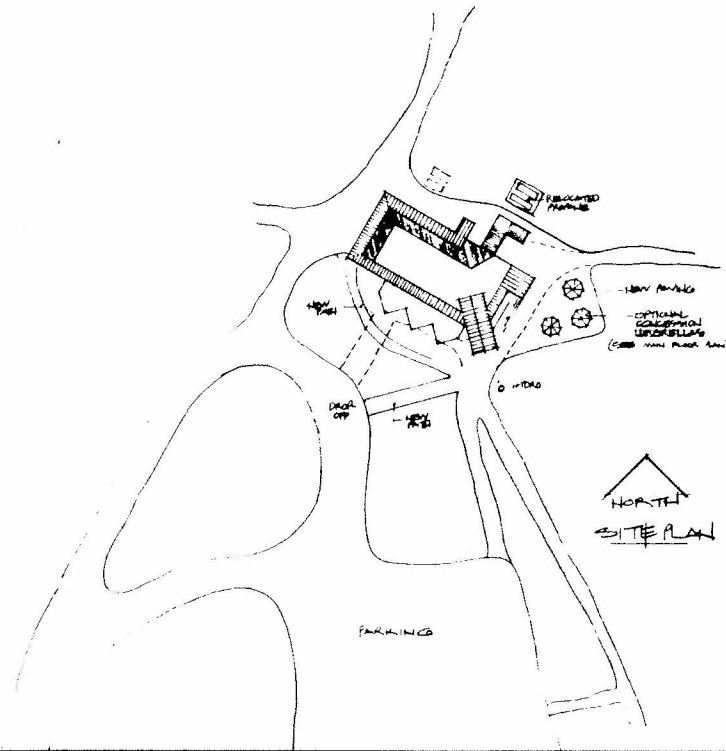
210-18 gostick place
 north vanouver, bc
 V7M 3G3 9862334

PROJECT NUMBER	0027
SHEET TITLE	PAVILION BURNABY MOUNTAIN
DATE	FEB 26/06
SCALE	1"=10'
DRAWN	
CHECKED	

NO.	DATE	DESCRIPTION
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LOWER LEVEL
4114 sq ft



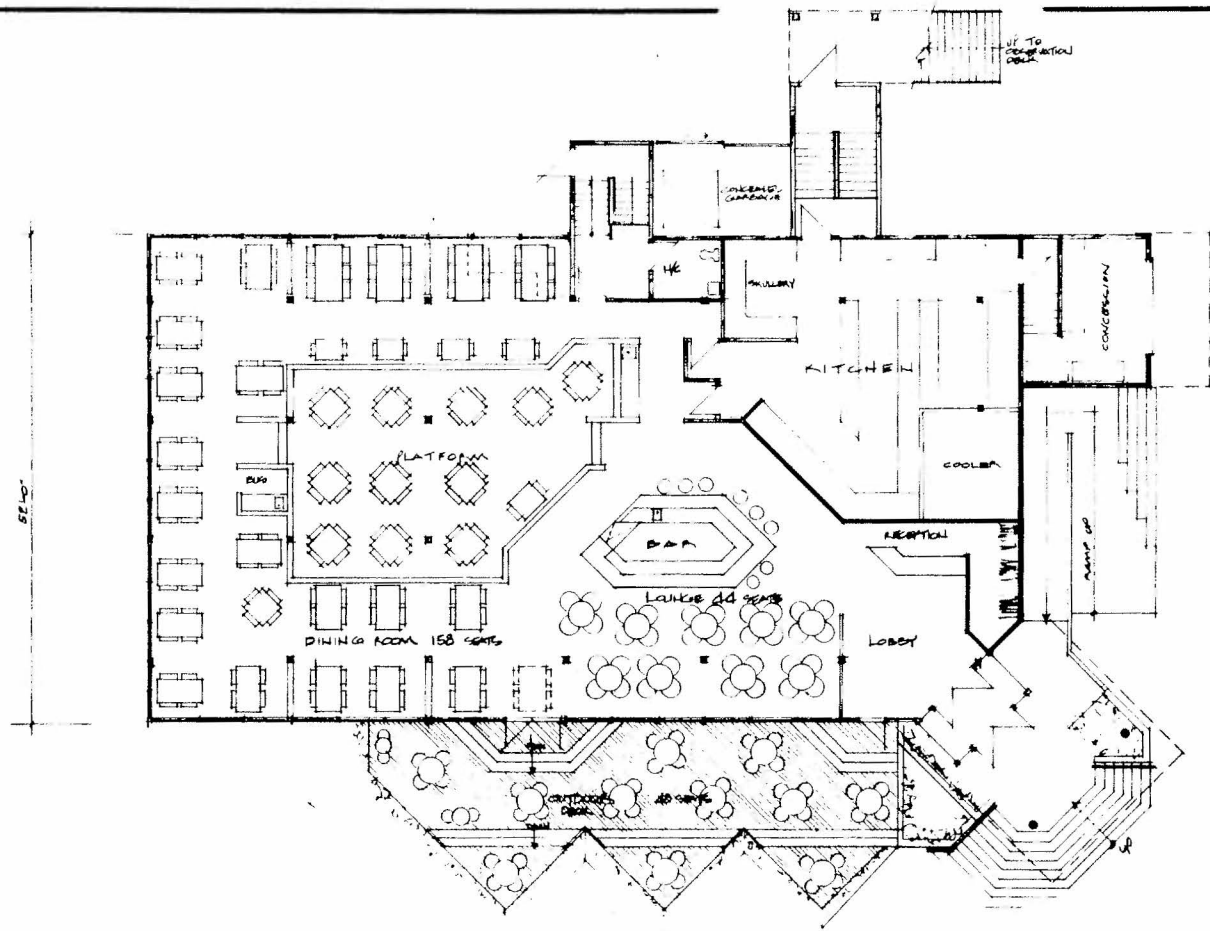
NORTH
SITE PLAN

PAVILION RESTAURANT
BURNABY MOUNTAIN
NINTENDO
 Entertainment Centres Ltd.



20-18 gostick place
 north vanouver bc
 V7M 3G8 986 2384

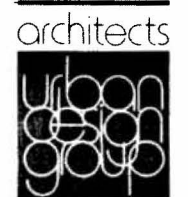
project number	5027
sheet title	SITE PLAN LOWER LEVEL
date	JUL 13/86
scale	1/8" = 1'-0"
drawn	TT
checked	



FLOOR PLAN
 TOTAL AREA 202 SQM
 5351*

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PAVILION RESTAURANT
BURNABY MOUNTAIN
NINTENDO
 Entertainment Centres Ltd.



20-18 guestick place
 north vanouver bc
 V7M 3G3 9862334

PROJECT NUMBER	EC21
SHEET TITLE	MAIN FLOOR PLAN
DATE	2000
DRAWN BY	TT
CHECKED	

DATED: _____

THE CORPORATION OF THE DISTRICT
OF BURNABY

AND

NINTENDO ENTERTAINMENT CENTRES LTD.

L E A S E

Legal Department
The Corporation of the
District of Burnaby
4949 Canada Way
Burnaby, B.C. V5G 1M2