

THE CORPORATION OF THE DISTRICT OF BURNABY



BYLAW NO. 8988

A BYLAW to authorize a lease to Tony Lam and Kim Leung of a portion of the municipally owned building situate at 6550 Bonsor Avenue and known as Bonsor Recreation Complex.

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. 1, 1988.
2. The Council is hereby authorized and empowered to lease unto Tony Lam and Kim Leung upon the terms, covenants and conditions more particularly set forth in the form of lease hereunto annexed (hereinafter called the "said lease") that part of the municipally owned building situate at 6550 Bonsor Avenue, in the Municipality of Burnaby, upon a portion of Lot 72, District Lots 152 and 153, Group 1, New Westminster District, Plan 46976, comprising 2,054 square feet, more or less, shown outlined in red on the sketch attached to the said lease and marked as Schedule I.
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 25th day of APRIL 1988  
Read a second time this 25th day of APRIL 1988  
Read a third time this 25th day of APRIL 1988  
RECONSIDERED AND ADOPTED THIS 2nd DAY OF MAY 1988

  
MAYOR  
  
CLERK



and rent upon and subject to the conditions hereinafter expressed, that area comprising 2054 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 (as defined in Clause 4) YIELDING AND PAYING to the Lessor for the Term, rent (as specified in Schedule II).

2. In addition to the rent the Lessee will, in each and every year during the Term (as defined in Clause 4), 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 Municipality 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 (as defined in Clause 4).

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. In addition the Lessor grants to the Lessee and its employees and agents a licence for the Licence Term (as hereinafter defined in this clause) to enter the Complex for the purpose of undertaking certain capital works and structural improvements as provided in Schedule III, which the Lessee shall undertake wholly at its cost and expense. The said licence is granted subject to the terms, covenants and conditions of this Agreement, save and except that the payment of rent is abated for the Licence Term. The Licence Term shall commence on the date of execution of this Agreement and end either:

(a) ninety (90) days thereafter; or

(b) the date the Leased Area is available for the commencement of business operations as contemplated in this Agreement

whichever is the sooner. It is the intent of this Agreement that the Term shall immediately and consecutively follow the termination of the Licence Term.

4. The Lessee shall, for the five (5) year period (hereinafter called the "Term") commencing 12:01 a.m. on the day following termination of the Licence Term, operate a food and beverage service and exclusive right to operate vending machines approved by the Lessor for the benefit of patrons of the Complex and for that purpose the Lessee, its servants and agents shall have full licence and liberty to enter upon, occupy and use the Leased Area as a food and beverage service and shall be entitled

to full ingress and egress to the said food and beverage service 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.

5. The Lessee's customers may, while consuming foodstuffs purchased from the Lessee, enter and temporarily remain on the adjacent patio (as outlined in black and so described in Schedule II), on the condition that the Lessee shall at its own cost and expense keep the patio in a clean and tidy condition at all times. This permission to enter the patio constitutes a licence only and may be revoked by the Lessor at any time.

6. The Lessee shall provide and serve for consumption in the Leased Area to all patrons of the Complex who desire to partake thereof and pay therefor, beverages, light refreshments and meals between the hours of 7:30 a.m. and 10:30 p.m. on each day the Complex is open. The Lessor and Lessee may by mutual agreement change the hours of operation. The Lessee shall supply beverages, refreshments and meals at reasonable prices. Provided always that such beverages, refreshments and meals shall be of good quality to the reasonable satisfaction of the Lessor and for this purpose the Lessor or its servants or agents may inspect any provisions brought or purchased by the Lessee for use in the food and beverage service.

7. The Lessor covenants with the Lessee that if the Lessee duly and regularly pays the rent and all other sums owing to the Lessor from time to time and performs 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 Agreement for a further term (hereinafter called the "Renewal Term") of five (5) years on the same terms and conditions as this Agreement save and except as follows:

- (a) the rent and all other financial obligations for the Renewal Term shall be those amounts as agreed in writing between the Lessor and the Lessee no later than thirty (30) days prior to the expiry of the Term. Failing agreement by such time, the rent and all other financial obligations for the Renewal Term shall be those amounts as determined by arbitration to be initiated upon written notice by either party to the other (which arbitration may be initiated by either party thirty (30) days prior to the expiry of the Term or thereafter) and after the giving of such notice, unless both parties can agree upon a single arbitrator within twenty (20) days of the giving of such notice, both parties shall appoint one arbitrator and the two arbitrators so appointed shall appoint a third arbitrator and the three arbitrators or the single mutually agreed arbitrator shall determine the rent and all other financial obligations for the Renewal Term, and the provisions of the Commercial Arbitration Act of British Columbia S.B.C. 1986, Chapter 3 and amendments thereto and re-enactments thereof for the time being in force shall apply to the selection of the arbitrators and the arbitration. Until the determination of the rent and any other financial obligations for the Renewal Term is made, the Lessee shall continue to pay the rent and all other financial obligations, in the amounts specified for the Term, which payments shall be a credit in favour of the Lessee on account of the rent payable for the Renewal Term. Provided that if the rent and/or other

financial obligations for the Renewal Term are ultimately determined to be in excess of the amounts payable under the Term, the Lessee shall forthwith upon such determination reimburse the Lessor for the unpaid excess. In determining the rental for the Renewal Term, the parties, the single arbitrator or the arbitrators may agree upon a fixed sum and a certain fraction of the Lessee's annual gross income, or a combination thereof.

- (b) the Agreement for the Renewal Term shall not contain any further right of renewal.
- (c) the Agreement for the Renewal Term shall not contain the provisions of Clause 7 and 8 of this Agreement.

PROVIDED THAT the Lessor gives no warranty or undertaking, express or implied, as to its power or obligation to grant or exercise the said option to renew or to grant the Renewal Term.

8. In the event that the Lessor does not, upon the expiry of the Term, grant the Renewal Term, the Lessor shall, unless the Lessee is in default hereunder, reimburse the Lessee Forty-two Thousand Two Hundred Sixteen (\$42,216.00) Dollars representing reimbursement of value of capital works and structural improvements, as defined in Schedule III hereto, providing the original cost did not exceed the fair market value thereof and providing same are in reasonable condition, which capital works and structural improvements shall revert to the Lessor and shall become the property of the Lessor absolutely at the end of the Term. Providing that the Lessor shall only reimburse the Lessee in respect of capital works and structural improvements which were new and unused at the time of installation in the Leased

Area. Providing further that in the event that the Lessor grants a Renewal Term the said capital works and structural improvements shall, upon the expiry of the Renewal Term or sooner determination of the Renewal Term revert to the Lessor and shall become the property of the Lessor absolutely without any payment or reimbursement to the Lessee.

9. The Lessee shall:

- (a) provide and pay for all food and other materials used in the preparation of meals served in the food and beverage service.
- (b) employ and pay an adequate staff for the purpose of preparing and serving beverages and meals in the food and beverage service.
- (c) ensure that all staff are clean, presentable, suitably attired and maintain required standards of hygiene.
- (d) ensure that the premises and operations are maintained in a clean and hygienic standard as specified under the Health Act.
- (e) provide, pay for and maintain all equipment for use in the food and beverage service kitchen and eating area. The standard, quality and type of equipment shall be reasonable and subject to inspection and the prior approval of the Lessor.
- (f) provide, pay for and maintain the furnishings and decor of the food and beverage service kitchen and eating area, including counter, millwork and flooring.



- (g) keep at the cost and expense of the Lessee, proper books of account which shall be open for inspection and audit by the Lessor at reasonable times upon reasonable notice.
- (h) provide an on-site supervisor mutually agreeable to both parties for liaison with the Lessor's representative.
- (i) provide at the cost and expense of the Lessee complete janitorial service at all times for the Leased Area and maintain at all times the area in a clean and sanitary condition (including windows, carpets, linoleum, walls, counters, etc.).
- (j) provide and maintain at the cost and expense of the Lessee CO<sub>2</sub> fire extinguishers in the kitchen.
- (k) allow patrons of the Complex to utilize the Leased Area as a lounge or waiting area while waiting for children, rides or the like.

10. The Lessee shall, at the cost and expense of the Lessee, throughout the Term and (if applicable) the Renewal Term, provide the Lessor with a monthly financial statement attesting to the revenues, expenses and any other information requested by the Lessor in respect of the Lessee's operations. The Lessee shall, at the request of the Lessor provide the Lessor with an annual financial statement respecting the Lessee's operations, which statement shall be prepared and certified by a chartered accountant or a certified general accountant licensed and qualified to practise in British Columbia. Audited statements will be provided by the Lessee at the Lessee's expense if requested by the Lessor's Director Finance.

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 thereto.

11. The Lessor shall provide light, power, heat and waste removal from an outside container. The Lessee shall reimburse the Lessor for all costs of light, power, heat, waste removal and other utilities in the amounts specified in Schedule IV attached hereto and forming part of this Agreement.

12. 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.

13. The Lessee shall be responsible for and shall indemnify and save harmless the Lessor from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever suffered, made, brought or prosecuted and howsoever caused, in any manner based upon, occasioned by or attributable to the execution or performance of these presents, or any action taken or thing done or maintained by virtue or in consequence hereof, or omitted to be so taken, done or maintained, or the exercise or purported exercise in any manner of rights arising hereunder.

14. The Lessee shall assume all risk of injury (including death) to any person or damage to any property whatsoever in any way arising out of or in connection with this Agreement 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.

15. The Lessee shall, during the currency of this Agreement, 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 Agreement.

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

- (a) Comprehensive general 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 restaurant and all the Lessee's operations in the Complex ("the Lessee's operations") and without limiting the foregoing, the Lessee agrees 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 Complex, all operations of every kind and description, including those of subcontractors, use and/or consumption of products. The minimum limits referred to above are:

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

In addition, this insurance policy shall include a provision for Tenants Legal Liability insurance in the minimum amount of \$100,000.00.

- (b) The Lessee shall, at its own cost and expense, insure and keep insured or cause to be insured and kept insured the Leased Area, including all restaurant equipment, 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 Complex 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, fire, 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.

(c) The Lessee shall effect or shall cause its contractor or contractors to effect, maintain and keep in force, prior to the commencement of those capital works and structural improvements provided in Schedule III together with those additional works required to finish the Leased Area (hereinafter called the "Development") to the standard of an operational restaurant, policies of 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 to other third party or public liability claims arising from any accident or occurrence upon, in or about the Complex and from any cause, including the risks occasioned by the Development, 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; 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 Complex and all fixtures, equipment, improvements and building materials on the Complex from time to time both during and after Development (but which may be by policies effected from time to time covering the risk during different phases of Development, 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).

17. (a) The policies of insurance referred to herein shall not contain a deductible in excess of \$1,000.00.
- (b) Any and all policies of insurance covering the Complex shall be written in the name of the Lessee as the insured with loss payable to the Lessee and the Lessor as their respective interest may appear, subject to the provisions of this Lease.
- (c) All insurance policies herein shall contain a waiver or waivers of subrogation against the Lessor.
- (d) All insurance policies herein shall contain a provision or shall bear an endorsement that the insurer will not cancel such policy without first giving the Lessor at least thirty (30) days' notice in writing of its intention to cancel.
- (e) The insurance moneys payable under the policies of insurance referred to herein shall be paid to the Lessor and the Lessor may at its option pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance moneys were paid.
- (f) The Lessee shall pay all the premiums under the policies of insurance referred to in this Agreement 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 Lessee 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. Certified copies of all policies of insurance referred to in this Agreement shall be delivered to the Lessor accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid.

- (g) The amount and form of coverage provided in this Agreement shall be subject to annual review by the Lessor and the Lessee shall make such adjustments and amendments as are required by the Lessor.
- (h) The said insurance policies shall bear endorsements to the effect that the Lessor is added as a named Insured on the policies 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.
- (i) 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 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.

18. If the Lessee shall make default in the performance and observance of the terms, covenants and conditions in these presents 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 or 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 Agreement without prejudice to any other remedies that are available to the Lessor in this Agreement or otherwise.

19. The Lessee shall not assign or otherwise transfer this Agreement without the 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. 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.



IN WITNESS WHEREOF the parties have executed these presents 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

SIGNED, SEALED AND DELIVERED BY THE LESSEE IN THE PRESENCE OF:

\_\_\_\_\_  
Name

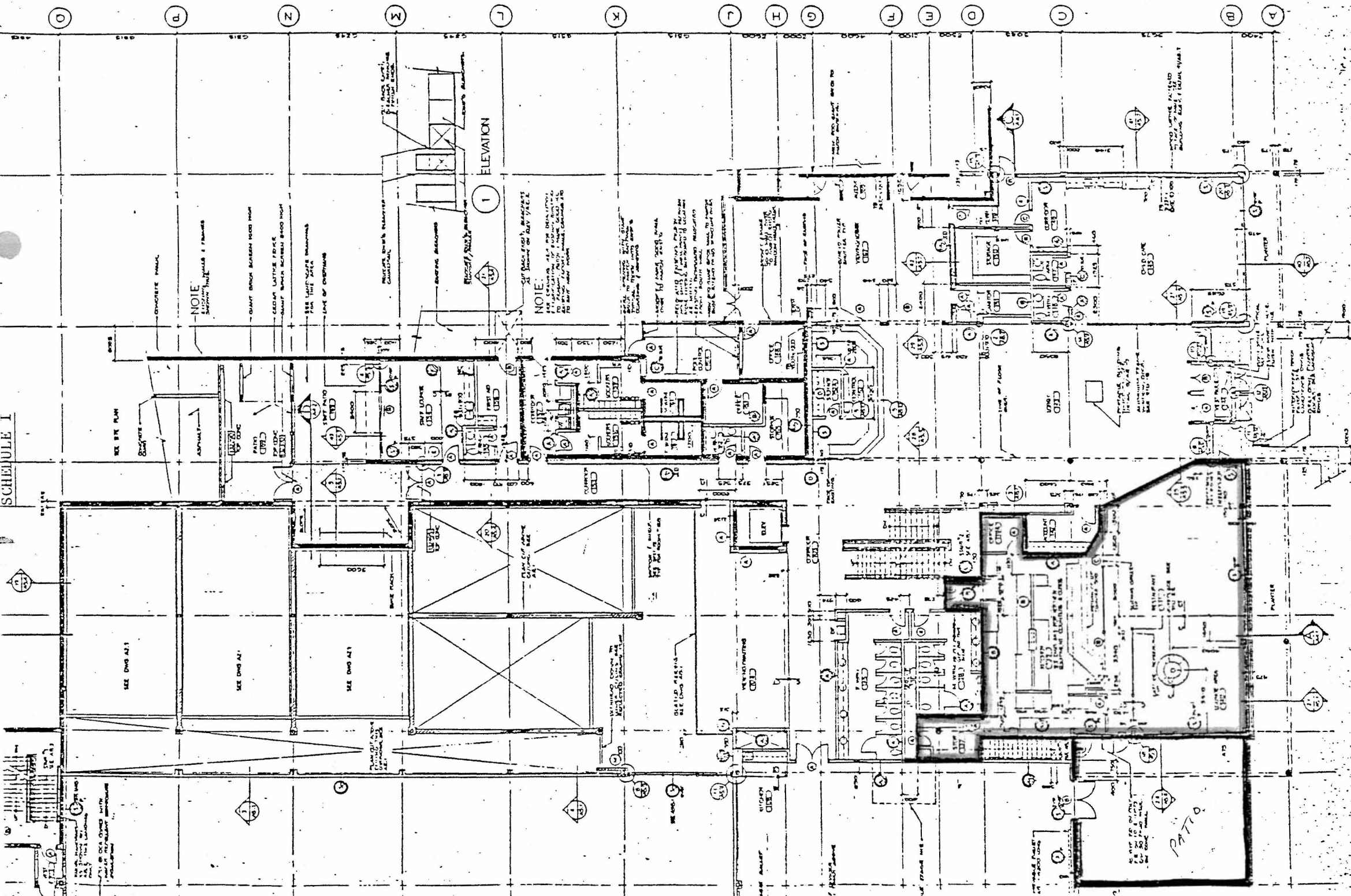
\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

TONY LAM \_\_\_\_\_ 

KIM LEUNG \_\_\_\_\_ 

SCHEDULE I



NOTE:  
 1. ALL WALLS TO BE CONCRETE  
 2. ALL FLOORS TO BE CONCRETE  
 3. ALL CEILING TO BE CONCRETE  
 4. ALL ROOF TO BE CONCRETE  
 5. ALL DOORS TO BE WOOD  
 6. ALL WINDOWS TO BE WOOD  
 7. ALL LIGHT FIXTURES TO BE WOOD

1 ELEVATION

NOTE:  
 1. ALL WALLS TO BE CONCRETE  
 2. ALL FLOORS TO BE CONCRETE  
 3. ALL CEILING TO BE CONCRETE  
 4. ALL ROOF TO BE CONCRETE  
 5. ALL DOORS TO BE WOOD  
 6. ALL WINDOWS TO BE WOOD  
 7. ALL LIGHT FIXTURES TO BE WOOD

PATIO

SEE SITE PLAN

CONCRETE WALL

QUANT BRICK SCREEN ROOF HOOD

CEILING LATHICE PERKE

QUANT BRICK SCREEN ROOF HOOD

FOR LIGHT FIXTURES

LINE OF OVERHANG

CONCRETE WALL

QUANT BRICK SCREEN ROOF HOOD

CEILING LATHICE PERKE

QUANT BRICK SCREEN ROOF HOOD

FOR LIGHT FIXTURES

LINE OF OVERHANG

CONCRETE WALL

QUANT BRICK SCREEN ROOF HOOD

CEILING LATHICE PERKE

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FOR LIGHT FIXTURES

LINE OF OVERHANG

CONCRETE WALL

QUANT BRICK SCREEN ROOF HOOD

CEILING LATHICE PERKE

QUANT BRICK SCREEN ROOF HOOD

FOR LIGHT FIXTURES

LINE OF OVERHANG

CONCRETE WALL

SCHEDULE II

R E N T

The Lessee shall yield up and pay to the Lessor rent for the first five years of the Term in the sum of either:

- (1) Fourteen Thousand Three Hundred Seventy-eight (\$14,378.00) Dollars per annum payable without abatements, set offs or defalcation, in advance in equal monthly instalments of One Thousand One Hundred Ninety-eight Dollars and Sixteen (\$1,198.16) Cents payable on the first day of each calendar month during the Term. The first payment to be made on the first day of the Term and thereafter on the first day of each and every month of the Term; or
- (2) 6.5% of the gross sale of food and beverages, whichever is greater.

Provided that in the event that the Lessee is granted a liquor licence for the sale of alcohol, the rental rate specified in this Agreement shall be adjusted by the Lessor. In the event of a dispute as to the adjusted rental rate the matter shall be determined in accordance with the provisions of Clause 7(a).

Second Floor Banquet Facilities (Licence)

In addition to the above rental rate, the Lessee shall yield up and pay to the Lessor as additional rent a percentage (as specified below) of gross sales revenues for food and beverage sold at the Banquetting Rooms and Facilities located on the second floor of the Complex. The Lessee's use of the Banquetting Rooms and Facilities shall be on a casual basis subject to prior agreement with the Lessor. Use of the Banquetting Rooms and Facilities shall confer a licence only and shall not constitute the grant of a lease. The said percentages of revenues are as follows:

First Year	0% of gross sales
Second Year	2.5% of Gross Sales
Third Year	2.5% of Gross Sales
Fourth Year	3.0% of Gross Sales
Fifth Year	3.0% of Gross Sales

SCHEDULE III

CAPITAL WORKS AND STRUCTURAL IMPROVEMENTS

Drywalling  
Permanent Walls  
Doors  
Ceiling System  
Electrical Fixtures  
Sprinkler System  
HVAC System  
Floor Tiles  
Cabinets  
Shelves  
Carpet  
Fitted Ventilators through  
Roof Structure

All the above works and improvements shall be to a standard satisfactory to the Lessor.

SCHEDULE IV

The Lessee shall reimburse the Lessor for the following:

Waste Removal -	25% of cost of refuse collection from outside container
Hydro (electrical) costs -	1.6% of the total cost of Hydro for the complete facility (the Bonsor Recreation Complex) calculated as 2,054 square feet as a percent of 126,000 square feet.

DATED: \_\_\_\_\_

THE CORPORATION OF THE  
DISTRICT OF BURNABY

AND

TONY LAM  
KIM LEUNG

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A G R E E M E N T

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