

THE CORPORATION OF THE DISTRICT OF BURNABY

BYLAW NO. 9665


A BYLAW to authorize the granting of a lease of certain municipally owned property to Burnaby Association for the Mentally Handicapped.


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, 1991.
2. The Council is hereby authorized and empowered to lease unto Burnaby Association for the Mentally Handicapped upon the terms, covenants and conditions more particularly set forth in the form of lease hereunto annexed (hereinafter called the "said lease") municipally owned property situate at 2736 Douglas Road and 2702 Norland Avenue, in the Municipality of Burnaby, legally described as Lot 1, District Lot 74, Group 1, New Westminster District, Plan 85837.
3. The Municipal Clerk is hereby authorized and empowered to execute the said lease, signing the same and affixing the corporate seal thereto.
4. Bylaw No. 9469 being Burnaby Lease Authorization Bylaw No. 4, 1990, is repealed.

Read a first time this	12th	day of	NOVEMBER	1991
Read a second time this	12th	day of	NOVEMBER	1991
Read a third time this	12th	day of	NOVEMBER	1991

RECONSIDERED AND ADOPTED THIS 18th DAY OF NOVEMBER 1991


MAYOR


CLERK

3.

THIS INDENTURE made the day of 1991.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

(hereinafter called the "Corporation")

OF THE FIRST PART

AND:

BURNABY ASSOCIATION FOR THE MENTALLY HANDICAPPED
3755 Banff Avenue
Burnaby, B.C. V5G 3Z9

(hereinafter called the "Society")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

A. The Corporation is the registered owner in fee simple of certain lands at 2736 and 2778 Douglas Street in the Municipality of Burnaby, Province of British Columbia, legally described as:

Parcel Identifier 016-205-944
Lot 1, District Lot 74, Group 1, New
Westminster District, Plan 85837

(hereinafter called the "Lands");

B. The Society is a non-profit Society incorporated under the provisions of the "Society Act", R.S.B.C., Chap. 390, for the purpose of caring for and promoting the welfare of mentally handicapped persons;

C. The Society wishes to construct on the Lands a Building (as hereinafter defined) to be used as a vocational service centre and workshop for the exclusive use of mentally handicapped persons;

D. The Society wishes to partly finance construction of the Building with a mortgage loan;

E. The Corporation, in order to assist this beneficial community undertaking, is willing to grant the Society a lease of the Lands at a nominal lease rate, and to forego the market rate for the Lands.

NOW THEREFORE the parties covenant with each other as follows:

1. In consideration of the payment to the Corporation of One (\$1.00) Dollar per annum by the Society, the Corporation hereby leases and demises the Lands to the Society for a term of thirty (30) years (the "Term") commencing on the 17th day of September 1990.

2. Providing the Society is not at any time in breach of this Lease or any renewal thereof, the Corporation shall, upon the written request of the Society no later than four (4) months before the expiration of the Term or any Renewal Term (as hereinafter defined), grant the Society further consecutive five (5) year renewals (the "Renewal Term(s)") of this Lease, the first such renewal to immediately follow this Term. The Renewal Terms shall be on the same terms and conditions as this Lease except that the number of renewals shall be reduced as each renewal is exercised and providing further that the last Renewal Term shall contain no further right of renewal. The maximum number of Renewal Terms to be granted by the Corporation shall not exceed six (6) for a maximum period in total of thirty (30) years.

In the event that the Society is not in breach of any terms and conditions of this Lease or any renewal thereof, and the Society requests that the Corporation grant a Renewal Term and the Corporation cannot grant the Renewal Term by reason of requiring the Lands for municipal purposes, then the Corporation shall compensate the Society for the depreciated value of the remaining leasehold interest in the Building, for the unexpired portion of the thirty (30) year period of the Renewal Terms. If the parties are unable to agree on the amount of compensation payable to the Society then the matter shall be determined by arbitration pursuant to the Commercial Arbitration Act, S.B.C. 1986, Chap. 3 as amended from time to time. Save as aforesaid the Corporation shall not be liable to compensate the Society upon the determination or expiration of the Term or any Renewal Term, or sooner determination of same by any manner whatsoever.

3. During the Term the Society shall have exclusive and quiet possession of the Lands provided that the Corporation by its officers and servants may at all reasonable times enter upon the Lands and Buildings for the purpose of ascertaining whether the Society is fulfilling its obligations under this Lease. And provided further that the Society acknowledges that a portion of the Lands will be required for containment of abutment and fill material for future road development.

4. The Society may not, without the prior written consent of the Corporation use the Building for any purpose other than as a vocational service centre and workshop for the mentally handicapped.

5. The Society shall at its own expense diligently proceed forthwith upon the granting of this Lease, to construct a building (the "Building") on the Lands and the Building shall comply with all applicable statutes, regulations and bylaws, and the design of the Building shall first be approved by the

Corporation. Without limiting the foregoing, the Building shall accommodate workshops for the mentally handicapped.

In the event that the Building has not been constructed and an occupancy permit granted in respect thereof by the Corporation on or before the 1st day of October, 1992, the Lease shall forthwith terminate unless this deadline is extended by mutual agreement.

6. The Building erected on the Lands shall immediately upon construction become part of the reversionary interest of the Corporation in the Lands and may not thereafter be demolished, removed or altered without the prior approval of the Corporation.

7. The Society shall at all times keep the Building clean, in good repair and adequately decorated, and shall keep the surrounding lands clean and tidy to a standard equal to that of municipal facilities.

8. The Society shall not use the Lands or Building in such manner as to create or constitute a nuisance.

9. Subject to Clause 9(a), the Society and its successors shall not without the prior written consent of the Council of the Corporation assign all or any of its rights under this Lease or sublet the Lands or Building or any portion thereof unless the assignee or sublessee, as the case may be, is an Approved Party as defined in Clause 9(b), provided that;

- (a) should the Society or its successors assign all or any of its rights under this Lease or sublet the Lands or Building or any portion thereof with the prior written consent of the Council of the Corporation, to an assignee or sublessee that is not an Approved Party, then the Corporation may increase the rent to market value (as defined in Clause 9(c) for the remainder of the Term or any Renewal Term;

(b) the term "Approved Party" shall mean a non-profit charitable entity registered under the Society Act, R.S.B.C., Chapter 390 or any amendments thereto, for the exclusive purpose of benefiting the community, as deemed suitable by the Corporation, acting reasonably;

(c) the term "market value" shall mean the fair market rental value of the Lands and Building as reasonably determined by the Corporation.

10. The Society shall pay promptly when due all charges for utilities, real property taxes, school taxes, business taxes, and licence fees, if any, applicable to the Lands, Building or to the Society's operations thereon. The Society covenants and agrees with the Corporation that if, during the Term or any Renewal Term, the Lands, Buildings or other structures, facilities and equipment that would otherwise have been subject to taxation, are exempt from taxation in whole or in part by reason of the Corporation's ownership thereof, then the Society shall in each and every year during the Term or any Renewal Term that such exemption occurs pay to the Corporation an amount equal to the amount that but for such exemption would have been paid by the Society.

11. The Society shall promptly pay all accounts and expenses for labour performed and material supplied to the Lands for the construction of the Building and any other works on the Lands, and shall indemnify the Corporation against all claims that may be made under the provisions of the Builders Lien Act or similar legislation, including any solicitor and client costs incurred by the Corporation in defending any such claims.

12. The Society shall throughout the Term or Renewal Terms, insure in coverage approved by the Corporation and in an amount or amounts approved by the Corporation and at all times keep

insured for their full replacement value, the Building and all structures to be erected on the Lands with an insurer licensed to carry on business in British Columbia, with the Corporation as an additional named insured, and shall, whenever demanded by the Corporation, exhibit proof of such insurance.

Each such policy of insurance shall contain a cross liability clause protecting the rights and interests of the named insureds as if a separate policy had been issued in respect of each. All insurance policies shall contain a waiver or waivers of subrogation against the Corporation.

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

Notwithstanding the foregoing, the Corporation and the Society acknowledge and agree that any policy of insurance maintained by the Society concerning the Lands and Building can be endorsed to name a Mortgagee (as defined in Clause 17) as

first loss payee in priority to any interest of the Society or the Corporation.

13. Upon the termination of this Lease by effluxion of time or otherwise, the Society shall peacefully deliver up vacant possession to the Corporation and shall leave the Lands and Building in a sanitary, neat, tidy, safe and empty condition.

14. If the Society shall hold over after the expiration of the Term or any Renewal Term whether by effluxion of time or otherwise, the new tenancy thereby created shall be a tenancy from month to month and not from year to year, and shall be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month and the amount of any rent then payable shall be as determined from time to time by the Corporation.

15. At the expiration or other determination of the Term or any Renewal Term, the fixtures and equipment installed in the Building shall, unless removed by the Society prior to expiration or determination of the Term or any Renewal Term, be deemed to be abandoned and become the property of the Corporation. The Society shall make good all damage to the Lands and Building caused by the removal of any fixtures and equipment, to the satisfaction of the Corporation.

16. The Society covenants with the Corporation that throughout the Term and any Renewal Term, the Society will comply with all relevant laws including without limitation, municipal, regional, provincial and federal and all police, fire and sanitary regulations, zoning and building bylaws and any municipal, regional, provincial, federal or other governmental regulations which relate to the construction, erection, maintenance and use of buildings and equipment, and to the operation, occupation and use of the Building or the Lands.

17. (a) If the Society shall default in performing or observing any of its covenants or obligations under this Lease and the Corporation shall have given to the Society and to each Mortgagee notice in writing sent by registered mail specifying such default and at the expiration of sixty (60) days after the giving of such notice the default shall continue to exist or, in the case of a default which cannot with due diligence be cured within the period of sixty (60) days aforesaid, the Society or a Mortgagee fails to proceed promptly after the giving of such notice to cure such default, the Corporation may forthwith determine this Lease, re-enter upon the premises and resume possession thereof, without prejudice to any other remedies which it may have. The Corporation hereby:

(i) grants a Mortgagee access to the Lands for the purpose of curing any such default;

(ii) acknowledges that a Mortgagee shall be entitled, but not obliged, to cure any default.

(b) The term "Mortgagee" or "mortgagee" shall be defined to mean a mortgage holder under a Mortgage;

(c) The term "Mortgage" or "mortgage" shall be defined to mean a mortgage of the interest of the Society in the Lease, the Lands and the Building whether by way of sub-lease, assignment or otherwise where the Mortgagee has obtained the consent of the Corporation to the charge created by the mortgage.

18. Notwithstanding Clause 17 or any other provision of the Lease, the Corporation covenants and agrees that:

(a) if at any time a Mortgagee gives written notice to the

Corporation of its intention to institute foreclosure proceedings against the Society's leasehold interest or to in any way realize upon its security as against any of the Lease, the Lands and the Building then the Corporation shall postpone its right to re-enter and terminate the Lease to allow the Mortgagee to institute such proceedings and carry them through to a determination provided always that:

- (i) if the Mortgagee shall enter into actual possession of the Lands and the Building then so long as the Mortgagee shall pay the rents reserved in the Lease and other moneys payable under the Lease, and observe and perform the other terms, covenants and conditions therein contained, the Mortgagee shall be entitled to enforce its rights under its mortgage without incurring any liability under the Lease in respect of any portion of the term of the Lease and any Renewal Term beyond the period of actual possession of the Lands and the Building enjoyed by the Mortgagee;
- (ii) the Mortgagee prosecutes the proceedings without undue delay;
- (iii) the Corporation will not unreasonably withhold its consent to:
 - a) the assignment, sale or other disposition of the Lease by the Mortgagee (whether by Court Order, private sale or otherwise) in so realizing on its security, whether or not the Mortgagee shall have entered into actual possession of the Lands;

b) the change in use of the Building to a use for a purpose other than as a vocational service centre and workshop for the mentally handicapped;

and provided further than any assignment, sub-lease or other disposition of the Society's interest under the Lease to a party other than an Approved Party shall, from the date of completion of the disposition, result in the rent under the Lease being increased to market value as set forth in Clause 9 of this Lease;

- (iv) while the Mortgagee is realizing upon its security, it shall be considered an Approved Party and rent shall not be increased to market rent;
- (v) if there is more than one Mortgagee, and more than one of them wishes to cure a default, commence foreclosure proceedings or enter into actual possession of the Lands or the Building then the Corporation agrees to permit curing of the default and entry into possession by the Mortgagee who is willing to cure and enter into possession and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees;
- (vi) no entry upon the Lands or the Building by a Mortgagee for the purpose of curing any default or defaults of the Society shall release or impair any continuing obligations of the Society;
- (vii) if a Mortgagee takes Order Absolute in its foreclosure proceeding and takes title to the Society's interest as Lessee under the Lease then

that Mortgagee shall make good such breach or breaches of covenant by the Society to the extent that the breach or breaches can be made good and shall attorn to and become the tenant of the Corporation pursuant to this Lease and applicable municipal regulations;

- (b) So long as a Mortgage is outstanding, if the Lease is forfeited, surrendered or otherwise terminated, the Corporation will grant to a Mortgagee a new lease of the Lands and the Building at the same rent and upon the same terms and conditions as reserved and contained in the Lease, for a term equal to the then unexpired portion of the term of the Lease and any Renewal Term, provided that:
- (i) if there is more than one Mortgagee, and more than one of them wishes to enter into a new lease with the Corporation, then the Corporation agrees to enter into the new lease with the Mortgagee whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees;
 - (ii) if a Mortgagee enters into a new lease with the Corporation and that Mortgagee is diligently trying to sell, assign, sub-let or otherwise transfer the interest of the Lessee under the Lease, that Mortgagee shall be considered an Approved Party.

19. If the Building or other improvements from time to time standing on the demised premises, or any equipment, machinery and other facilities thereon are totally or partially destroyed by any cause whatsoever, there shall be no abatement of rent, and the Society shall repair, replace, rebuild or restore the Building or other improvements with all reasonable diligence,

provided that if the Building is damaged or destroyed in excess of twenty-five (25%) percent of its insurable value, the Society or any mortgagee for the time being of the leasehold interest may within thirty (30) days of such damage or destruction at its option give written notice to the Corporation that it does not wish to repair or rebuild, and if the Society or such mortgagee delivers such notice, the Lease shall terminate immediately, in which event any insurance proceeds on account of such damage or destruction shall belong exclusively to the Corporation, subject to the prior claims, if any, of the mortgagee, and the Society agrees that any repair or construction hereunder shall be in general conformity with such design as may be approved by the Corporation.

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

21. The Society assumes all risks in any way arising from the Society's use, occupation, possession or enjoyment of the Lands and Building.

22. The Society acknowledges that it has been made aware of the presence on the Lands of marsh gas containing methane which may cause explosions, and the Society agrees to take all

necessary steps, at its own expense, to abate and minimize any risks inherent in the presence of such gas without limiting the generality of Clauses 20 and 21. The Society assumes all risks including risk of injury, death and property damage, in relation to such gas and agrees to indemnify and hold harmless the Corporation in relation to any liability, loss, cost, damage or action that may in any way arise therefrom.

23. The Society shall not suffer, cause or permit the commission of permissive, voluntary or equitable waste to the Lands or the Building.

24. The Society covenants with the Corporation that if the Term hereby granted or any Renewal Term shall be at any time seized or taken in execution or in attachment by any creditor or creditors of the Society or its assigns, or if the Society or its assigns shall make any assignment for the benefit of creditors or becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, or if the Society shall enter into receivership whether voluntarily or involuntarily or if a receiver or trustee in bankruptcy is appointed over some or all of the affairs of the Society, the then current rent shall immediately become forfeited, and the Term or Renewal Term shall immediately become forfeited and void, and the Term or Renewal Term shall immediately cease and determine and these presents thereupon shall be void and of no further force or effect either at law or in equity save and except in respect to any moneys due or owing by the Society to the Corporation at such time and save and except for any remedies or claims that the Corporation may pursue against the Society. The aforesaid rights of the Corporation shall be subject to the rights of the Mortgagee as set forth in Clauses 17 and 18 of this agreement.

25. It is mutually agreed that any excusing, condoning or forbearance by the Corporation in respect of any default, breach

or non-observance by the Society at any time of any covenant, provision, condition or requirement in this Lease shall not operate as a waiver of the Corporation's rights hereunder in respect of any subsequent default, breach or non-observance of the terms of this Lease and shall not defeat or affect in any way the Corporation's rights in respect of any such subsequent default or breach.

26. Any notice required or desired to be given under or in respect of any of the terms of this Lease may be given by mailing the same by double registered mail addressed to the party to whom the same is to be given as follows:

If given to the Corporation:

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

If given to the Society:

Burnaby Association for the Mentally Handicapped
3755 Banff Avenue
Burnaby, B.C.
V5G 3Z9

and any notice so given shall be deemed to have been given when, in the ordinary course of post, it should have been delivered.

IN WITNESS WHEREOF the Corporation and the Society have hereunto affixed their seals, attested by the hands of their proper signing officers in that behalf duly authorized, 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 BURNABY ASSOCIATION
FOR THE MENTALLY HANDICAPPED was hereunto
affixed in the presence of:

M. Bridget Hain
Authorized Signatory
John W. Morrison
Authorized Signatory

END OF DOCUMENT