

ITEM	4
MANAGER'S REPORT NO.	51
COUNCIL MEETING	1982 09 20

RE: BURNABY LAKE SPORTS COMPLEX FIELDHOUSE - RUGBY COMMITTEE

ACTING MUNICIPAL MANAGER'S RECOMMENDATION:

1. *THAT the recommendation of the Director Recreation & Cultural Services be adopted.*

* * * * *

1982 SEPTEMBER 15

TO : MUNICIPAL MANAGER
FROM: DIRECTOR RECREATION & CULTURAL SERVICES
RE : BURNABY LAKE SPORTS COMPLEX FIELDHOUSE - RUGBY COMMITTEE

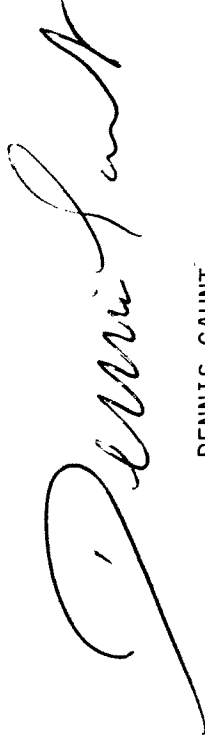
RECOMMENDATION:

1. THAT Council approve and direct the Solicitor to execute the Burnaby Lake Sports Complex Fieldhouse licence agreement.

REPORT

At its meeting of 1982 September 15 the Parks & Recreation Commission received the attached report on the above subject.

The Commission approved the two recommendations contained in this report.



ps
Attach.

DENNIS GAUNT
DIRECTOR RECREATION &
CULTURAL SERVICES

RE: BURNABY LAKE SPORTS COMPLEX FIELDHOUSE - RUGBY COMMITTEE

RECOMMENDATIONS:

1. THAT the Commission approve the Burnaby Lake Sports Complex Fieldhouse licence agreement.
2. THAT the Commission request Council to approve and direct the Solicitor to execute the licence.

REPORT

The Burnaby Lake Sports Complex Fieldhouse construction is near completion. The Rugby Committee will be issued their licence agreement when the facility is determined to be operational.

This report is prepared in order to provide the Commission with a summary of the financial status of the project, the Rugby Committee's anticipated cash flow for the first five years and to receive approval for the proposed licence agreement.

The project has been funded through three sources: Municipal tax funds, a Provincial Facility Grant and the Rugby Committee's fund-raising campaign. The dollars contributed are:

<u>Public Funds</u>	
Burnaby Province	\$241,736.00
	<u>175,512.49</u>
	\$417,248.49
<u>Private Funds</u>	
Rugby Committee	\$373,591.52
	<u>TOTAL \$790,840.01</u>

The rationale for the municipal contribution was the degree of public access to the facility. The features of the facility are illustrated on the plan attached to the licence. As illustrated, the completed facility incorporates 9,973 total square feet. This is comprised of 5,666 square feet public space, 1,885 square feet for exclusive club functions and 2,422 square feet for circulation (foyer, hallways, stairs). Changes from the original plans and agreement include the deletion of:

- 1) Post game room
- 2) Club training room

The terms of the agreement are reflective of the terms of the operating agreement approved by the Commission 1980 March 05 and approved by Council 1980 March 10, as attached, which outlines the intended facility sharing, detailing the public components and the services being offered to the public by the Rugby Committee, i.e. a member lounge service, a multi-use program area and a public food and refreshment concession.

There were two aspects of the agreement that required special clarification. These were the responsibility for costs associated with utilities and the intended disposition of profits realized by the Committee. The potential profits to the society would be derived from the food and beverage lounge, the food concession and the multi-use room rental.

The recommendation re: the cost of utilities is that the Commission cover these costs for the first five years. This is a shift from the original agreement that indicated we would always cover these costs. The rationale for a five year period is based on both honoring the intent of the original agreement and the society's expenditure-revenue projections for the project over its first five years of operation.

This financial projection has been presented by the Rugby Committee and supported by staff:

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The annual expenses identified by the Committee is based on a five year estimation which includes:

- 1) its operating expenses for staff and its net profits for its rental and food and beverage services
- 2) its loan debt which is to be paid back over 5 years at \$40,000 per year for a total repayment of \$200,000.

Annual Expenditures

Staffing: Manager, janitors, support staff
 Debt repayment

\$50,000
 40,000
 TOTAL \$90,000

Annual Revenue

Lounge services
 Concession
 Allotment - rentals

\$25,000
 10,000
 20,000
 TOTAL \$55,000

It is the society's intention to offset the deficit of \$35,000 each year through donations and fund-raising events.

The projected utility costs for the total facility in 1983 are \$40,000. Staff have calculated that the Rugby Committee will be accountable for 19% of the cost of utilities. This is based on the current utility costs, the projected increases and the nature of the utility demands for the public components and the Committee's components.

The cost for utilities for the Committee's component over the next five years inflated at 15% annually are:

1983	\$ 7,600
1984	8,740
1985	10,051
1986	11,558
1987	13,291
	TOTAL \$51,240

It is evident when considering the annual cash flow and the cost of utilities that the Rugby Committee would not be in a position to absorb these costs for the first five years. In light of our original agreement and our desire for this project to be a success, it is recommended that the Commission absorb these utility costs for the first five years of operation.

The concerns of the Commission relative to the disposition of real profits has been covered in the proposed agreement. It is the Rugby Committee's objective to direct funds into the development and support of amateur sport in Burnaby. The degree to which this occurs is dependent on their financial status annually. As the estimates of their cash flow indicate, real profits will not be realized for a number of years.

The Director will receive annual audit statements that will allow the Commission to monitor the Committee's application of funds.

Staff conclude that the attached licence agreement fairly represents the best interests of the Corporation and the Rugby Committee. The Committee supports the recommended terms.

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PROPOSED OPERATING AGREEMENT BETWEEN THE BURNABY LAKE RUGBY COMMITTEE
AND THE BURNABY PARKS AND RECREATION COMMISSION RE:
THE USE OF THE EXPANDED BURNABY LAKE SPORTS COMPLEX FIELDHOUSE AND
SOCIAL FACILITY:

The terms of the "operating agreement" between the Burnaby Lake Rugby Committee (registered under the Societies Act) and the Burnaby Parks and Recreation Commission will be contained in a "licence agreement" having an effective term of 20 years. The "licence agreement" will be drawn by the Legal Department of The Corporation of the District of Burnaby, following approval from both parties involved of the guidelines contained herein.

1. The ground floor of the facility, which includes dressing rooms 5, 6, 7 and 8, staff and handicapped washrooms, post game area, referee and first-aid rooms, concession/kitchen, club training room and corridors will be administered and allotted by the Parks and Recreation Department for public use with the following provisions:
 - (a) The Burnaby Lake Rugby Committee will be given priority in the allotment of dressing room #7 adjacent to the club training room. This would typically include Saturdays and Sundays between September and June in conjunction with allotments for fields #1 and #2 and weekday evenings in conjunction with allotments for practice fields.
 - (b) The club training room will be allotted to the Burnaby Lake Rugby Committee on an exclusive basis and will be available on a negotiated basis, for Parks and Recreation sponsored programs.
 - (c) (i) The Burnaby Lake Rugby Committee will be given priority in the allotment of the concession and the post game areas for either 1) operating a refreshment service for the public, or 2) post game activities
 - (ii) The concession will typically operate during times when the fields are being utilized to a fair degree and/or when other activities within the Sports Complex area involve substantial numbers of participants and/or spectators.
 - (iii) The concession and/or the post game area will also be available for casual public use when not allotted for use by the Rugby Committee as an adjunct to playing field activities, including soccer, fieldhockey, cricket, etc., and will be supervised by Parks and Recreation staff.

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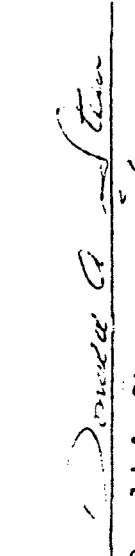
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2. The second floor of the facility which includes the banquet area, kitchen, bar, deck, clubroom, office, washrooms, storage rooms and corridors/stairways, will be allotted exclusively to the Burnaby Lake Rugby Committee to be operated 12 months of each year for the conduct of club activities; rentals, banquets and food and beverage services, conduct of meetings, seminars, etc., for members and the public. The Parks and Recreation Department will have use of the banquet hall and/or meeting room for Burnaby Lake Sports Complex related programs and activities only, sponsored by the Department, on a negotiated basis with the Rugby Committee, e.g. coaching clinics, Fun Runs, fitness workshops. No rental charges will be assessed for such program uses.
3. The Parks and Recreation Department will assume responsibility for all building cleaning, inside maintenance and supervision of the ground floor facilities, with the exception of the club training room and the concession/kitchen area (except for any uses which are not under the control of the Rugby Committee).
4. The Burnaby Lake Rugby Committee will assume responsibility for building cleaning, inside maintenance and supervision of the second floor facility except for any uses sponsored by the Parks and Recreation Department.
5. The Parks and Recreation Department will assume responsibility for the cost of all services including building insurance, heating, lighting and water, as well as exterior building maintenance and landscape maintenance.
6. The rental rates and other charges established by the Burnaby Lake Rugby Committee for facilities, functions, activities and services which take place on the second floor, will be subject to the approval of the Parks and Recreation Administrator and will generally be compatible with fees and charges for similar facilities and services in other public facilities.
7. Both parties agree that a spirit of co-operation and co-ordination will be maintained in the allotment, administration and supervision of the facility for the mutual benefit of both parties and the public of Burnaby.


Donald A. Steen
Chairman


Administrator
Parks and Recreation


Malcolm A. Christie
Finance Co-ordinator

Dated

1981 Feb. 03

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THIS LICENCE made this _____ day of _____ 1982 .

BETWEEN:

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THE CORPORATION OF THE DISTRICT
OF BURNABY

(hereinafter called "the Licensor")

OF THE FIRST PART

AND:

THE BURNABY LAKE RUGBY COMMITTEE

A society duly incorporated under the laws of the Province of British Columbia, and having its office in the Burnaby Lake Fieldhouse, at Sprout Street and Sperling Avenue, in the District of Burnaby, in the Province of British Columbia

(hereinafter called "the Licensee")

OF THE SECOND PART

WHEREAS the Parties entered into an agreement in July 1980 with respect to the construction of an addition to the Fieldhouse at Burnaby Lake Sports Complex owned by the Licensor. A copy of the said agreement marked Schedule "A" is attached hereto and forms part hereof;

AND WHEREAS clause 3 of the aforesaid agreement obliges the Licensor, so far as it legally can, to grant the Licensee the use for a term of twenty years of certain facilities in the Fieldhouse;

NOW THEREFORE THIS LICENCE WITNESSETH as follows:

SECTION 1

GRANT OF LICENCE:

DESCRIPTION OF PREMISES

1.1 The Licensor hereby grants to the Licensee the licence, permission and privilege to occupy and use, subject to all of the terms and conditions hereof, the premises outlined in red on the Burnaby Lake Fieldhouse plan attached hereto as Schedule "B" (the "premises") during the term commencing on the 1st

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day of _____ 1982 and ending on the _____ day of _____ 2002, paying therefor the sum of One (\$1) Dollar on the _____ day of _____ during each year of the term.

SECTION 2

LIMITATION TO DESCRIBED PURPOSE

- 2.1 The premises may be occupied and used by the Licensee for the conduct of its activities, including rentals, banquets, food and beverage services, meetings and seminars. Use for any purpose other than the aforementioned uses shall require the prior written approval of the Director Recreation and Cultural Services (hereinafter called "the Director").
- 2.2 The Licensor reserves the right to use and occupy the premises without charge during periods when the premises are not being used by the Licensee or persons with whom the Licensee has contracted for use of the premises. The Licensor shall ensure that the premises are clean and tidy after any such use or occupation.

SECTION 3

RATES FOR RENTALS

- 3.1 The Licensee shall submit annually a proposed schedule of rates for rental of the premises for the approval of the Director, who shall make any alterations in the proposed rates that he considers necessary to ensure that rental charges are comparable with charges for similar facilities operated by the Licensor. The schedule approved by the Director shall be effective until a new schedule is approved.
- 3.2 The Licensee agrees that the net income received from the premises shall be used only to retire any indebtedness of the Licensee or in furtherance of the purposes and objects of the Licensee and to assist and encourage sports associated with the Burnaby Lake Sports Complex.

3.3 All revenues derived from rental agreements or 112

other agreements between the Licensee and other persons or organizations are the property of the Licensee.

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LICENSEE'S COVENANTS

4. The Licensee hereby covenants with the Licensor:
- (a) To keep the premises and all furniture, equipment, articles and utensils in good and sufficient repair, reasonable wear and tear only excepted, and in a clean and sanitary condition, and to repair according to notice and to leave same in good repair, and without limiting the generality of the foregoing to clean up and dispose of all paper, bottles, refuse, garbage and like matter from the said premises.
 - (b) To acquire at their own expense all necessary permits and licences.
 - (c) Not to carry on or permit to be carried on in or upon the said premises any activity that the Licensor deems to be a nuisance or annoyance.
 - (d) To observe and abide by all laws, bylaws and regulations of the Licensor or other competent authority that in any manner relate to or in any way affect the use of the said premises.
 - (e) Not to assign or sublet this Licence.
 - (f) To assume all risk of injuries (including death) to any person and damage to any property whatsoever in any way arising out of or in connection with the Licensee's use of the premises, or anything done or omitted to be done by the Licensee, its servants, employees, agents or members.

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(g) To be responsible for and indemnify and save harmless the Licensor from and against all claims, 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 in the exercise or purported exercise in any manner of rights arising hereunder.

(h) The Licensee shall insure and keep insured while this License is in force, with such companies and on such forms as are acceptable to the Licensor, at the Licensee's expense, Comprehensive General Liability Insurance coverage covering Premises and Operations Liability. The limits of liability shall not be less than the following:

Bodily Injury Liability	\$1,000,000	each occurrence
	\$1,000,000	aggregate products and/or completed operations
Property Damage Liability	\$1,000,000	each occurrence
	\$1,000,000	aggregate products and/or completed operations

The Licensor shall be added as an additional named insured under the Comprehensive General Liability Policy.

A cross liability clause shall be made part of the Comprehensive General Liability Insurance.

The Comprehensive General Liability Policy shall provide that it cannot be cancelled, lapsed or materially changed without at least thirty (30) days' notice to the Licensor by Registered Mail.

Prior to the first day of July annually, the Licensee shall file with the Licensor a certified copy of its Public Liability Insurance Policy with the necessary endorsements

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attached.

Should the Licensee neglect to obtain and/or maintain insurance as aforesaid, or deliver such policy or certificates to the Licensor, then it shall be lawful for the Licensor to obtain and/or maintain such insurance and the Licensee hereby appoints the Licensor its true and lawful attorney to do all things necessary for this purpose. All monies expended by the Licensor for insurance premiums under the provisions of this clause shall be charged to the Licensee.

(i) Not to make any claim or demand against the Licensor for detriment, damage or injury of any nature and howsoever caused to the said premises or to any buildings, structures, erections, improvements, motor or other vehicles, materials, supplies, articles, goods, effects or things at any time erected, brought, placed, made or being upon the said premises.

(j) To furnish the Licensor annually, at the end of the Licensee's fiscal year, with a copy of its operating statement and balance sheet duly certified by the Licensee's auditor, together with a current list of its members.

SECTION 5

MUTUAL COVENANTS

5. It is mutually understood by and between the parties hereto:

(a) That the Licensee is in no sense a servant, employee or agent of the Licensor and the Licensor shall in no manner be responsible for the debts and liabilities of the Licensee.

(b) That this Licence is not to be construed as conferring

on the Licensee or on any other person on behalf of the Licensee any legal or equitable estate or interest or tenancy in any lands of the Licensor and in particular in the premises.

(c) Whenever in this Licence it is stipulated that anything shall be done or performed by either of the parties hereto it shall be assumed that such party has thereby entered, and such party does hereby enter into a covenant with the other party to do or perform the same.

(d) That in the event of the Licensee at any time not complying with the provisions of this Licence or in case the Licensee shall not well and truly perform the stipulations, covenants and agreements on its part in these presents contained or in the case of the bankruptcy or insolvency of the Licensee or in the case of its entering into any arrangement or composition with its creditors or in case it shall endeavour to or shall assign, underlet or part with the possession of the said premises or any part thereof or the privilege hereby granted then in all, either, or any of such cases the Licensor may thereupon cancel and terminate this Licence by giving the Licensee six (6) months' written notice, but without prejudice to the remedies of either party in respect of any previous breach thereof. And the Licensee shall vacate the said premises on the date mentioned in such notice. No termination as aforesaid shall give rise to any claim whatsoever on account of or arising out of such termination.

(e) That any notice required or desired to be given under or in respect of any of the terms of this Licence may be given by mailing the same in a prepaid registered envelope

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addressed to the party to whom the same is to be given as follows:

If given to the Licensor:

The Corporation of the District of Burnaby
4949 Canada Way
Burnaby, BC V5G 1M2

If given to the Licensee:

The Burnaby Lake Rugby Committee
Burnaby Lake Fieldhouse
Spratt Street and Sperling Avenue
Burnaby, BC

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

SECTION 6

UTILITIES AND OTHER SERVICES

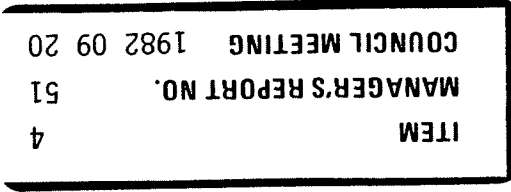
6.1 The Licensor shall provide and pay the cost of heat, electricity, water and hot water for the Fieldhouse, including the premises, for the first five (5) years of this Licence. Thereafter, commencing July 1, 1987 the Licensee shall pay the portion of the charges attributable to the premises.

IN WITNESS WHEREOF the parties hereto have caused their corporate seals to be affixed attested by their proper officers on the day and year first above written.

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

MUNICIPAL CLERK-AUTHORIZED SIGNATORY

THE CORPORATE SEAL OF THE SOCIETY
WAS HEREUNTO AFFIXED IN THE
PRESENCE OF:



SCHEDULE "A"

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THIS AGREEMENT made the _____ day of _____ 1980.

BETWEEN:

THE BURNABY LAKE RUGBY COMMITTEE, a Society incorporated under the Societies Act of the Province of British Columbia, Certificate of Incorporation 15198 dated December 5, 1979

(hereinafter called "the Society")

OF THE FIRST PART

AND:

THE CORPORATION OF THE DISTRICT OF BURNABY (hereinafter called "Burnaby")

OF THE SECOND PART

WHEREAS Burnaby owns and operates a Sports Complex adjacent to Burnaby Lake of which a Fieldhouse (hereinafter called "the said Fieldhouse") is a part.

AND WHEREAS the Society wishes to construct an addition to the said Fieldhouse (hereinafter called "the said addition").

AND WHEREAS the purposes of the Society are to develop and maintain a rugby and community recreation facility in the Burnaby Lake Sports Complex and to purchase, lease, hire or otherwise acquire and hold lands or buildings, or any interest therein, for the purposes of furthering the aims of the Society.

AND WHEREAS Burnaby has agreed to permit the Society to construct the said addition upon the terms, covenants and conditions hereinafter contained.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. The Society covenants and agrees with Burnaby

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- (a) to construct the said addition according to plans and specifications prepared by Herbert Challier, Architect, (hereinafter called "the said Architect") and to provide all materials and perform all the work required by the said plans and specifications.
- (b) to commence construction of the said addition not later than March 11, 1980 and complete construction of the said addition not later than December 30, 1980.
- (c) to pay all costs of constructing the said addition.
- (d) to hire a competent contractor to superintend the construction of the said addition and to ensure that the said addition is constructed in a proper and workmanlike manner.
- (e) to coordinate construction of the said addition to permit continuing use of the existing facilities in the said Fieldhouse.
- (f) to be responsible for and to indemnify and save harmless Burnaby from and against all claims and demands, liens, 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 this agreement, or any action taken or thing done or maintained by virtue or in consequence thereof, or omitted to be so taken, done or maintained, or the exercise or purported exercise in any manner of rights arising hereunder.
- (g) to provide builders all-risk insurance and public liability insurance in form and amounts satisfactory to Burnaby, joining Burnaby as an additional insured.
- (h) to observe and abide by all by-laws of Burnaby and the regulations of any other competent authority in respect of the said addition.

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(i) to make good at its expense any damage to the said Fieldhouse arising in any way from the construction of the said addition.

2. It is agreed, covenanted and understood by and between the parties hereto that

(a) the cost of constructing the said addition is \$526,537.00 and that Burnaby will contribute \$143,000.00 thereof; the Society by a grant from the Provincial Government will contribute the sum of \$175,512.00 and shall pay the balance of \$208,025.00 by means of materials, services, volunteer labour and cash donations.

(b) the said Architect shall provide Burnaby's Treasurer from time to time with his certificates certifying that certain payments have been made for materials and services and that certain goods and services of a specified value have been donated and thereupon Burnaby's Treasurer will reimburse the Society for the said amounts paid out or contributed but in no case shall Burnaby be responsible for payment of any moneys in excess of its contribution of \$143,000.00.

(c) the said addition and every part thereof shall be and remain the property of Burnaby.

(d) the Society, in order to ensure partial payment of its share of the cost of the said addition, shall provide a letter of credit from the Toronto Dominion Bank guaranteed by the Mohawk Oil Company in the amount of \$40,000.00.

(e) the Society, including its members and volunteers, shall have no claim against Burnaby for injury or damage arising in any manner from the construction of the said addition whether caused by the negligence of Burnaby, its servants or agents, or otherwise.

(f) if the Society shall neglect or fail to complete the said addition by the due date, or any extension thereof which Burnaby for good cause may grant, Burnaby may complete the said addition and the Society shall be liable for the cost thereof.

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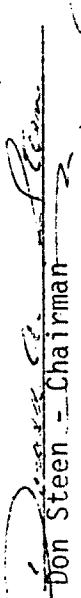
3. It is further agreed, covenanted and understood by and between the parties hereto that upon satisfactory completion of the said addition by the Society, Burnaby, so far as it legally can, shall by separate agreement in writing grant to the Society for the term of twenty years the use of certain facilities more particularly described in the said agreement and upon the terms and conditions in the said agreement contained.

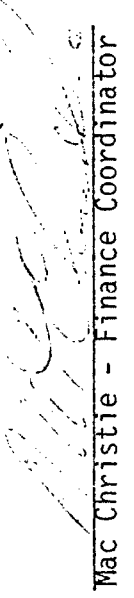
IN WITNESS WHEREOF the parties hereto have caused their corporate seals to be affixed attested by their proper officers on the day and year first above written.

THE CORPORATE SEAL OF THE SOCIETY

WAS HEREUNTO AFFIXED IN THE

PRESENCE OF:

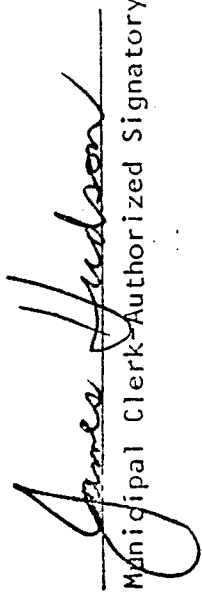

Don Steen - Chairman


Mac Christie - Finance Coordinator

THE CORPORATE SEAL OF BURNABY WAS

HEREUNTO AFFIXED IN THE PRESENCE

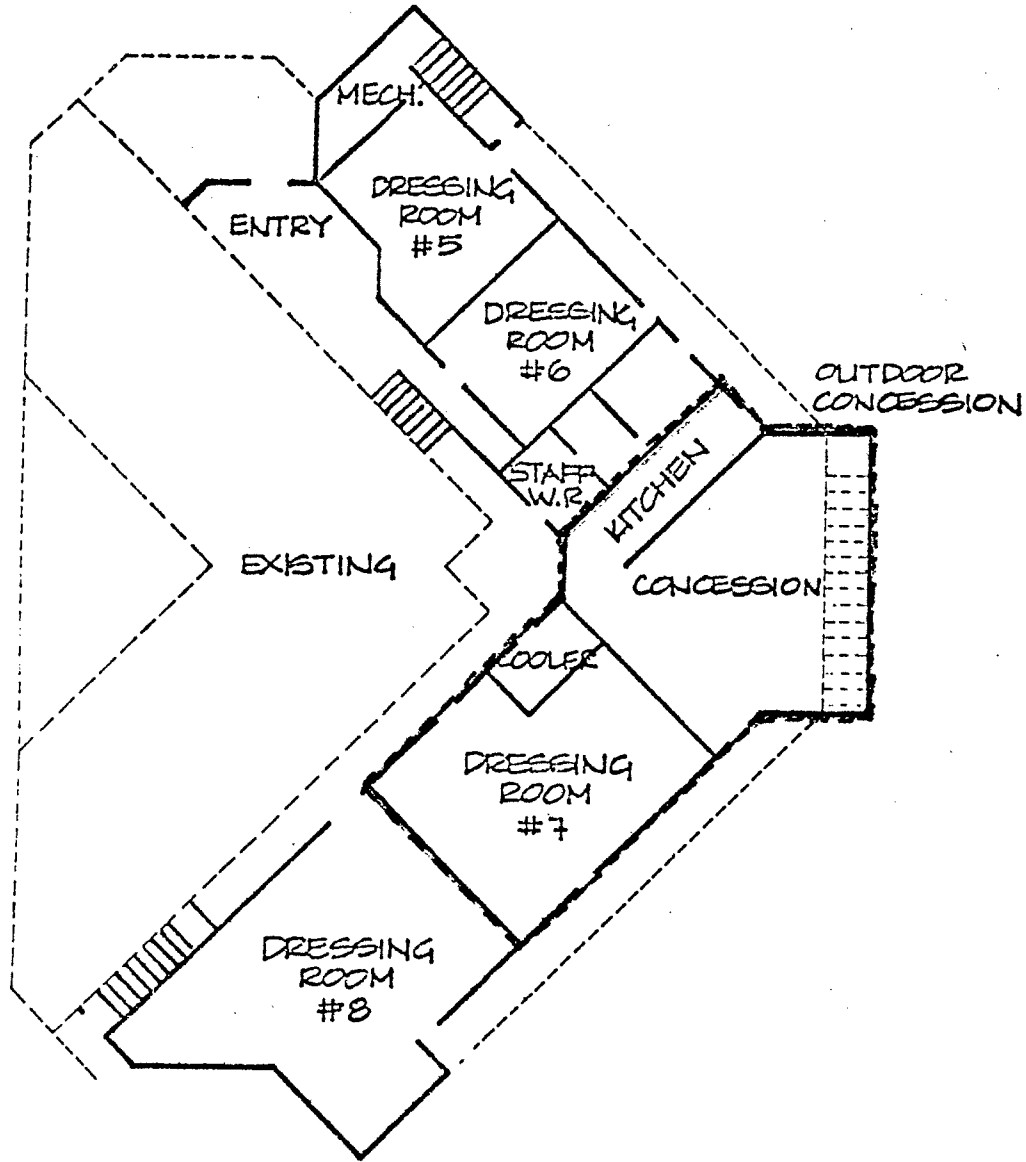
OF:


Municipal Clerk - Authorized Signatory

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FIRST FLOOR

SCHEDULE "B"

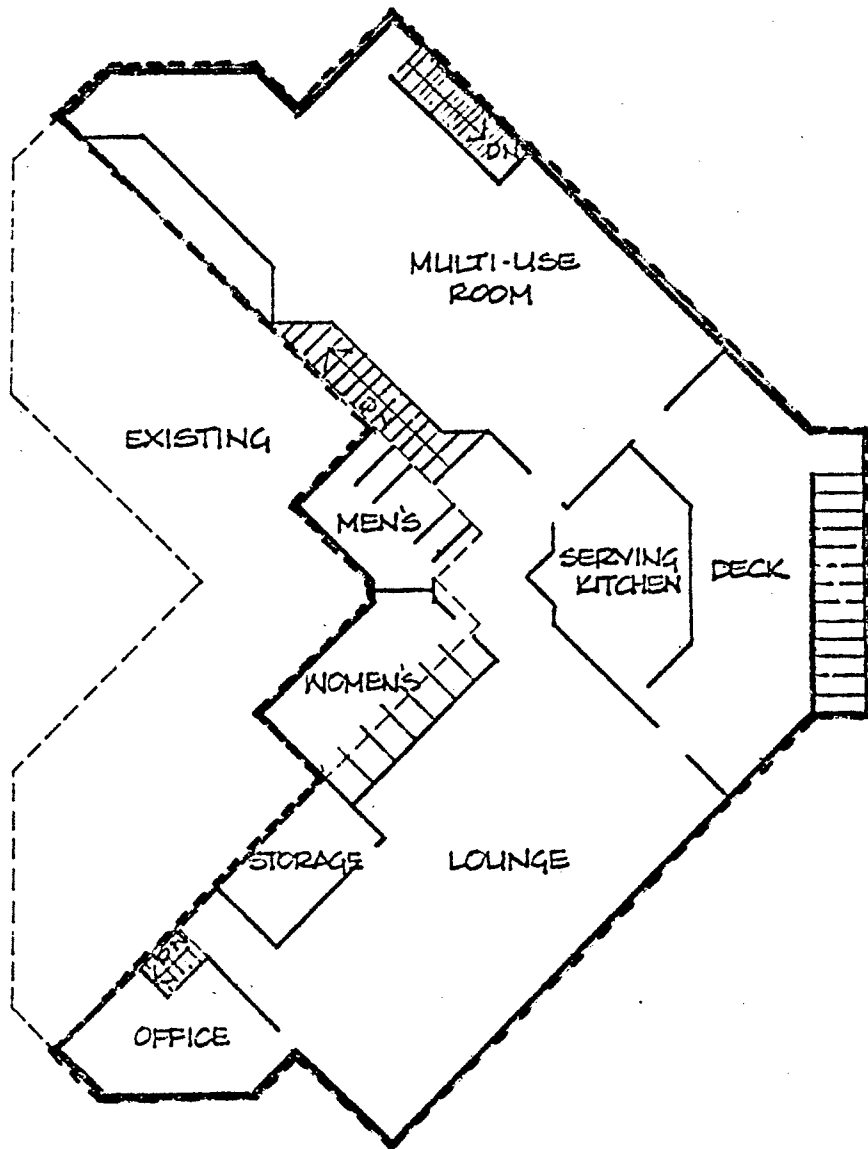


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SECOND FLOOR

SCHEDULE "B"



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