

ITEM 12
MANAGER'S REPORT NO. 64
COUNCIL MEETING 89/10/10

RE: HARRY JEROME SPORTS CENTRE LEASE

MUNICIPAL MANAGER'S RECOMMENDATION:

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

* * * * *

1989 OCTOBER 05

TO : MUNICIPAL MANAGER
FROM : DIRECTOR RECREATION & CULTURAL SERVICES
RE : **HARRY JEROME SPORTS CENTRE LEASE**
PURPOSE: To obtain Council's authority to authorize the execution of a lease agreement with the Bicycling Association of British Columbia.

RECOMMENDATION:

1. THAT the lease agreement with the Bicycling Association of British Columbia be executed.

REPORT

At its meeting of 1989 October 04, the Parks & Recreation Commission considered the attached staff report on the above subject and approved the recommendation contained therein.

In recommending this lease, the Commission wishes to make it clear to Council that the Cycling Association does not yet have authority to proceed with its project.

The lease is only intended as official confirmation of the Corporation's intent: it allows the Association to consolidate its fund raising efforts.

The Commission is also aware of the fact that in dealing with a non-profit Association, the same guarantees of completion cannot be provided as with a Corporation constructed building under the normal tender and bonding process.

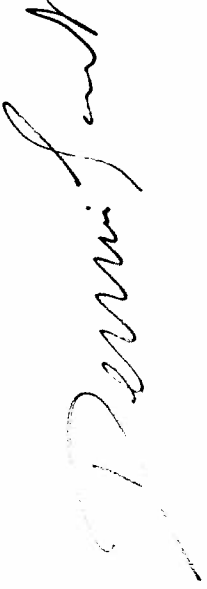
However, the maximum guarantees available will be put in place. The project will not be allowed to proceed until the Association proves to the satisfaction of the Corporation that cash funding or written pledges are in place for the full amount of the first phase. The first phase is a completed and enclosed building shell.

Once those assurances are in place, the Commission considers the Corporation to be a partner in this project. Partnership in such a public project contains some element of risk. Every effort will be made to monitor the project and reduce this risk.



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The Commission has had extensive discussions with the Legal Department and the Finance Department on the ramifications of this project and the need for guarantees. The Commission supports it fully and so recommends to Council.



DENNIS GAUNT
DIRECTOR RECREATION &
CULTURAL SERVICES

DG:ps
Attach.

cc: Municipal Solicitor
Director Finance

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RE: HARRY JEROME SPORTS CENTRE LEASE

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RECOMMENDATION:

1. THAT Council be requested to authorize the execution of the attached lease agreement with the Bicycling Association of British Columbia.

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REPORT

The Commission and Council in September of 1988 approved in principle the leasing of parkland, Lots "A" and "B" D.L. 215, Plan 9377 N.W.D. Barnet Highway to the Bicycling Association of British Columbia for the purpose of constructing the Harry Jerome Sports Centre.

Since that time, negotiations have taken place with the Association and all terms and conditions have been agreed upon and are now presented for execution in the attached lease.

Following the implementation of the lease, the Association will be bringing forward their financial plans and will make application for their building permit. Once their funding is in place and all subdivision servicing and plan approvals have been given, the Association will be granted their building permit and will proceed with construction as per the terms of the lease. It is anticipated the facility will be operational within eighteen to twenty-four months from the start of construction.

ND/seo
Attach.

cc - Municipal Solicitor

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THIS AGREEMENT made this _____ day of _____

BETWEEN:

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

(the "Lessor")

OF THE FIRST PART

AND:

THE BICYCLING ASSOCIATION OF BRITISH COLUMBIA
1200 Hornby Street
Vancouver, B.C. V6Z 2E2

(the "Lessee")

OF THE SECOND PART

WHEREAS the Lessor is the owner of lands legally

described as:

Municipality of Burnaby - The 5.335 ha. portion of
Lots A and B of District Lot 215, Group 1, New
Westminster District, Plan 9377

(the "Lands");

AND WHEREAS the Lessee is a non-profit Society
registered under the Society Act, Chapter 390 R.S.B.C. for the
purposes provided in its Constitution, a copy of which is
attached hereto as Schedule "A";

AND WHEREAS the Lessee has requested that the Lessor
grant a Lease of the Lands with the intent that the Lessee will
construct thereon a sports centre and veledrome (the "Veledrome")
containing a covered bicycle track, sports ground and related
facilities;

AND WHEREAS the Lessor has agreed to lease to the Lessee

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the Lands upon the terms and conditions herein contained.

NOW THIS AGREEMENT WITNESSETH that in consideration **P40** the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor doth hereby demise and lease the Lands unto the Lessee and the Lessee does hereby take and rent the Lands upon and subject to the conditions hereinafter expressed.

To have and to hold the Lands from the 30th day of September, 1989 to the 29th day of September, 1994 (the "Term") yielding and paying to the Lessor for the Term rent in the amount of One (\$1.00) Dollar per annum payable yearly in advance on the first day of September in each and every year of the Term commencing on the first day of September, 1989.

Provided the Lessee is not in default of any condition or provision of this Lease and the Lessee serves written notice on the Lessor on or before the first day of June, 1994 requesting the grant of a further five year lease of the Lands the Lessor will, subject to the approval of the Council of the Lessor, grant to the Lessee a further lease of the Lands for a five year term (the "First Renewal Term") commencing immediately upon the day of expiration of the Term granted herein, such agreement to contain the same covenants, promises and agreements as the present agreement except that such agreement shall not contain any further right of renewal except in respect of the Second Renewal Term and Third Renewal Term (as hereinafter defined) and shall not contain the requirement to construct the Veledrome as specified in Clause 1. Provided that the Lessor gives no warranty or undertaking express or implied as to its power to grant or confer this said option or First Renewal Term.

Provided the Lessee is not in default of any condition or provision of the Lease in respect of the First Renewal Term,

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and the Lessee serves written notice on the Lessor no later than ninety days before expiration of the First Renewal Term, requesting the grant of a further five year lease of the Lands the Lessor will, subject to the approval of the Council of the Lessor, grant to the Lessee a further lease of the Lands for a five year term (the "Second Renewal Term") commencing immediately upon the day of expiration of the First Renewal Term granted herein, such agreement to contain the same covenants, promises and agreements as the present agreement except that such agreement shall not contain any further right of renewal except in respect of the Third Renewal Term and shall not contain the requirement to construct the Veledrome as specified in Clause 1. Provided that the Lessor gives no warranty or undertaking express or implied as to its power to grant or confer this said option or Second Renewal Term.

Provided the Lessee is not in default of any condition or provision of the Lease in respect of the Second Renewal Term, and the Lessee serves written notice on the Lessor no later than ninety days before expiration of the Second Renewal Term, requesting the grant of a further five year lease of the Lands the Lessor will, subject to the approval of the Council of the Lessor, grant to the Lessee a further lease of the Lands for a final five year term (the "Third Renewal Term") commencing immediately upon the day of expiration of the Second Renewal Term granted herein, such agreement to contain the same covenants, promises and agreements as the present agreement except that such agreement shall not contain any further right of renewal and shall not contain the requirement to construct the Veledrome as specified in Clause 1. Provided that the Lessor gives no warranty or undertaking express or implied as to its power to grant or confer this said option or Third Renewal Term.

In the event that the Lessee is not in default of any provisions of this Lease and the Lessee requests the grant of the

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First, Second or Third Renewal Term, (insert name) after collectively called the "Renewal Terms") of the Lands and the Lessor does not grant a Renewal Term as aforesaid, the Lease shall terminate and the Veledrome and all fixtures therein and all fixed components (excluding the cycle track) and any other buildings or structures on the Lands shall become the property of the Lessor subject to payment by the Lessor to the Lessee of compensation based upon the following formula:

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Five (5%) percent of the sum of \$1,500,000.00 for each remaining unexpired year of the Renewal Terms in respect of which the Lessor has not granted a Renewal Term, with the proviso that the amount of compensation for the second, third, fourth and fifth years of the Third Renewal Term shall not be less than \$300,000.00, it being the intent of this agreement that the minimum payment of \$300,000.00 as aforesaid shall represent compensation and reimbursement to the Lessee for use of the Veledrome by the lessor and the Parks Commission of The Corporation of Burnaby (hereinafter called the "Parks Commission").

It is understood and agreed by and between the Lessor and Lessee that save as aforesaid, no further compensation shall be paid or due by the Lessor to the Lessee.

It is further understood and agreed by and between the Lessor and Lessee that save as aforesaid, if the Term or Renewal Terms are terminated

(i) due to any default or breach of this Lease by the Lessee or non-observance by the Lessee of any covenant, or provision, condition or requirement of this Lease, or

(ii) by effluxion of time, or

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(iii) at the request of the Lessee and with the concurrence of the Lessor, or

(iv) due to the destruction of the Veledrome as provided in Clause 7.1

then the Veledrome and all fixtures therein and all fixed components (excluding the cycle track) and any other buildings and structures on the Lands shall become the property of the Lessor without any compensation or payment by the Lessor to the Lessee.

This Lease is made upon and subject to the preceding and following covenants and conditions.

CONSTRUCTION OF VELEDROME

General

1.1 It is a condition of this Lease and the Lessee agrees that forthwith upon commencement of the Term it will undertake wholly at its own expense the construction and building (the "Lessee's Work") of the Veledrome, being a multi-purpose fully enclosed sports complex for cycling and sport activities, comprising a cycling track and a multi-sport infield within the said cycling track. The Veledrome shall be covered with a permanent roof and provide accommodation for offices for sports medicine, administrative offices and ancillary facilities.

1.2 The Lessee shall proceed to promptly apply for and obtain all necessary municipal, provincial and federal approvals for the Lessee's Work and the uses to which it is to be put, and shall ensure that the Lessee's Work proceeds in a prompt, diligent and timely fashion so that the Veledrome is fully

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constructed and open to the public and other users on or before the twenty-fourth month following the issuance of a building permit. The construction cost of the Veledrome shall be no less than \$1,500,000 and the Lessee's Work shall be completed in accordance with the following schedule:

(1) Stage I

Complete the exterior of the Veledrome, parking lot and interior showers and restroom facilities in a good and workmanlike manner and in accordance with all bylaws of the Lessor within one year of the issuance of a building permit.

(2) Stage II

Commence all landscaping on the Lands and finish the bicycle track by the sixteenth month from the issuance of a building permit.

(3) Stage III

Complete all phases of construction by the twenty-fourth month from the issuance of a building permit.

It is understood and agreed that if the Lessee does not obtain a building permit for the Lessee's Works within one year of the date of this Agreement then this Agreement shall forthwith terminate without any compensation to the Lessee.

1.3 The Lessee shall be solely responsible for all and every cost, expense and liability in respect of the Lessee's Work and the operation and maintenance of the Veledrome. Without limiting the generality of the foregoing, the Lessee shall be solely responsible for:

(i) the extension and connection of electrical, water, sewage, telephone and other utility services;

(ii) all roads, curbs, gutters; and

(iii) landscaping and maintenance of the Lands.

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1.4 The Lessee shall not build, erect, construct, place, maintain or cause, suffer or permit the Veledrome to be built, erected or constructed without the prior written approval of the Lessor's Director Recreation and Cultural Services to the plans and specifications for same and the Lessee agrees to strictly adhere to such plans and specifications wholly at its own expense.

Builders' Liens

1.5 The Lessee shall promptly pay all amounts for work, service and material when due and shall forthwith remove any builders' liens or other liens or other charges registered against the Lands or any buildings thereon, or any part thereof on account of the Lessee' Work. And the Lessee shall not permit or suffer any charges or builders' lien or other liens for labour, compensation, services or materials to be registered against the Lands or any buildings thereon. The Lessee shall, in any event, pay, satisfy, release and discharge same within forty-two (42) days after the the day of registration of any lien against the Lands or any buildings thereon at the Land Title Office, 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

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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 in order to secure cancellation and discharge of any lien. The Lessee shall at all times defend and conduct such action in a prompt and diligent manner. If the Lessee fails to promptly discharge or cause any such lien to be discharged, or fails to conduct a diligent, prompt or bona fide dispute of same, then in addition to any other rights or remedies of the Lessor, the Lessor may, but shall not be obligated to, discharge the lien by paying the amount claimed to be due into Court or directly to the lien claimant, and the amount so paid and all costs and expenses (including legal costs on a solicitor-client basis and expenses) shall be immediately due and payable by the Lessee to the Lessor.

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Requirements Prior to Commencing Work

1.6 The Lessee shall, prior to commencing the Lessee's Work, provide written evidence satisfactory to the Lessor of the following:

- (i) Letters of Commitment to provide funding for the Lessee's Work in an amount of \$350,000.00 from the Province of British Columbia and \$250,000.00 from the City of Vancouver. In addition the Lessee shall provide written evidence that it has on deposit \$50,000.00 cash to be applied to the Lessee's Work.
- (ii) Letters of Commitment for donations in an amount sufficient to meet the balance required to complete the construction of the enclosed Veledrome.
- (iii) An irrevocable Letter of Credit in favour of the Lessor, from a lending institution approved by the Lessor, in an

amount approved by the Lessor, to meet the cost of providing connection of sewer to the Veledrome.

- (iv) A financial statement in form satisfactory to the Lessor indicating the financial plan for the first three years of operation of the Veledrome, which financial plan shall be subject to the approval of the Lessor's Director Recreation and Cultural Services.
- (v) That a qualified construction management firm approved by the Lessor has been appointed to act as prime consultant and to supervise all phases of the Lessee's work, including payment of contractors and subcontractors. A construction management plan shall be submitted to the Lessor's Planning and Building Inspection Department providing, inter alia, certification of the total cost of the project and a breakdown of each phase thereof.

Requirements after Performance of the Work

- 1.7 The Lessee shall, upon completion of the Lessee's Work:
- (a) provide the Lessor with a statutory declaration (hereinafter called the "Declaration");
- (i) stating that the Lessee's Work has been performed in accordance with all of the provisions of the plans and specifications;
- (ii) stating that there are no builders' liens, mechanics' liens, Workers' Compensation liens or other liens or encumbrances affecting the Veledrome or the Lands in respect of work, compensation, services or materials relating to the

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Lessee's Work and that all accounts for work, compensation, services and materials have been paid in full with respect to all of the Lessee's Work;

(iii) confirming the date on which the last such work was performed and materials were supplied. **148**

(b) provide to the Lessor a clearance certificate issued under the Workers' Compensation Act in respect of each contractor and sub-contractor involved in the Lessee's Work; and

(c) obtain and provide to the Lessor a copy of every occupancy and other permit which may be required by any governmental or other regulatory authority having jurisdiction, to permit the Lessee to open for its operations.

PAYMENT OF TAXES

Lessee to Pay Taxes on the Lands and Improvements

2.1 In addition to the rent herein provided, the Lessee will in each and every year during the Term and Renewal Terms 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 Lands, the Veledrome, all other structures, all machinery, equipment, facilities, improvements and other property of any nature whatsoever thereon and therein, whether such taxes, rates,

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duties, charges and assessments are charged by any municipality, parliamentary, legislative, regional, school or other authority during the Term and Renewal Terms.

2.2 In the event that the Lands and Veledrome 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 reserved to the Lessor in respect of rent in arrears.

2.3 The Lessee further covenants and agrees that during the Term and Renewal Terms, it will deliver to the Lessor for inspection receipts for payments of all taxes, rates, duties, charges, assessments, including school taxes, local improvement rates and other charges in respect of the Lands, the Veledrome, all other structures, all machinery, equipment, facilities, improvements and other property of any nature whatsoever thereon and therein which were due and payable during the Term and Renewal Terms within fourteen (14) days following receipt by the Lessee of each of such receipts for payments.

Delinquent Taxes

2.4 If the Lessee shall in any year during the Term or Renewal Terms fail to pay the real property taxes and other charges when due, the Lessee shall thereupon pay interest at the percentage rate or rates established for unpaid real property

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taxes in the Municipality of Burnaby.

Exemption from Taxes

2.5 Provided that in the event that the Lessee applies for and is granted exemption from real property taxation, then the Lessee's obligations hereunder to pay real property tax is abated to the extent and duration of such exemption.

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Payment for Utility Services

2.6 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, waste and garbage removal and other utilities and services used in or supplied to the Lands and the Veledrome throughout the Term and Renewal Terms 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 rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

Business Tax and Licence Fees

2.7 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 Lands, and the Veledrome, in respect of the use, operations or occupancy thereof by the Lessee (and any and every sublessee, permittee, agent 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 Renewal Terms. and will indemnify and keep indemnified the Lessor from and against

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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 rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

LAWS AND BYLAWS

3.1 The Lessee covenants to promptly and faithfully observe and comply with all laws, bylaws, regulations, statutes and lawful orders which touch and concern the Lands and the Veledrome and the Lessee's activities within and upon the Lands and the Veledrome.

USE OF LANDS AND VELEDROME

Lessee's Purposes

4.1 It is a condition of this Lease and the Lessee agrees that the Veledrome and the Lands shall only be used for the purpose of operating a veledrome, bicycle track, sports ground, sports medicine clinic and administrative offices for use by the general public.

4.2 In the event that the Lessee ceases to be a registered society under the Society Act, Chap. 390, Revised Statutes of British Columbia and amendments thereto, or ceases to be a non-profit society or ceases to observe the purposes and objects recited in Schedule "A", this Lease shall, unless such changes have been approved in advance by the Lessor's Director Recreation and Cultural Services, forthwith terminate without any compensation to the Lessee.

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Conditions of Operation

4.3 The Veledrome will be operated and maintained by the Lessee, at the sole cost and expense of the Lessee, and the Veledrome will be used exclusively for sports and recreational purposes or directly related events and activities. In the event of any dispute between the Lessor and Lessee as to the interpretation of this clause, the opinion of the Lessor's Director Recreation and Cultural Services shall be final and binding.

4.4 Without limiting the foregoing, the Lessee will provide and allow recreational cycling and competitive cycling programs, both to be available to the general public seven days a week.

4.5 The Lessee hereby grants to the Lessor's Parks and Recreation Department and any community recreation groups referred by the said Department, the exclusive right to use the infield within the Veledrome and related facilities including wooden gym floor and related sports fixtures, washrooms, change rooms and storage rooms for twenty hours each week for each week of the Term and any Renewal Terms, between the hours of 6:00 p.m. and 11:00 p.m., Monday to Thursday or any other appropriate blocks of time requested by the Lessor.

4.6 In addition to the rights conferred upon the Lessor in Clause 4.5, the Lessee hereby grants to the Lessor's Parks and Recreation Department and any community recreation groups referred by the said Department, the first option to use the Veledrome including washrooms, change rooms and storage rooms, after the needs of the cycling programs have been met. Any user fees charged by the Lessee in respect of Parks Commission sponsored community groups shall not exceed the tariff of fees specified in the Parks and Recreation Facility Fees Bylaw as

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amended from time to time. No allotment or other fees shall be charged to the Lessor for activities led, directed or organized by the Lessor's Parks and Recreation Department.

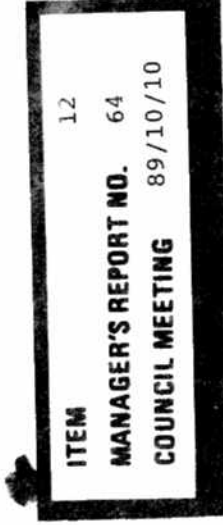
4.7 Any user fees charged by the Lessee for users that are not part of the said community recreation groups shall be subject at all times to the approval of the Lessor's Director Recreation and Cultural Services.

INSURANCE

5.1 At all times during the Term and Renewal Terms 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

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, 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 operations and the activities of all persons in the Veledrome and on the Lands and without limiting the foregoing, shall agree 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 Veledrome, 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:

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(i) Bodily injury to or death of one or more persons in any one occurrence, Two Million (\$2,000,000) Dollars and

(ii) Loss or damage to property, including loss of use thereof in any one occurrence, Two Million (\$2,000,000) Dollars.

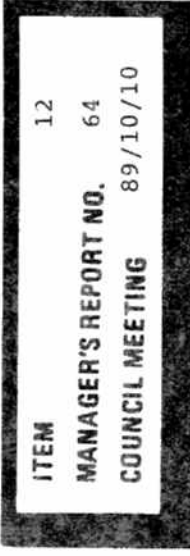
The said minimum limits may, on a reasonable basis, be changed or amended from time to time by the Lessor.

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.

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.



Workers Compensation

5.2 The Lessee shall 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.

Fire Insurance and Pressure Vessel Insurance

5.3 At all times during the Term and Renewal Terms the Lessee shall, at its own cost and expense, insure and keep insured or cause to be insured and kept insured the Veledrome and any other buildings or structures on the Lands in an amount satisfactory to the Lessor 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 Lands and the Veledrome 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, 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.

At all times during the Term and the Renewal Terms the Lessee shall at its own cost and expense maintain in respect of the Veledrome or any other buildings or structures on the Lands ¹⁵⁶ pressure vessel insurance with one or more companies entitled to do business in the Province of British Columbia protecting the Lessor and the Lessee in respect of all boilers and such other pressure vessels as the Lessor or the Lessee may from time to time deem it necessary to insure in amounts to be designated by the Lessee and approved by the Lessor, such insurance shall also cover loss or damage caused by rupture of steam pipes.

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Identity of Insured

5.4 Any and all policies of insurance covering the Veledrome and any other buildings or structures on the Lands 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. Each policy of insurance shall contain a provision or shall bear an endorsement that the insurer will not cancel any policy or make a material change or allow any policy to expire, without first giving the Lessor at least thirty (30) days' notice in writing of its intention to cancel by return registered mail.

Payment of Insurance Premiums

5.5 The Lessee shall pay all the premiums under the policies of insurance referred to herein 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 Lessor 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.

Copies of Insurance Policies

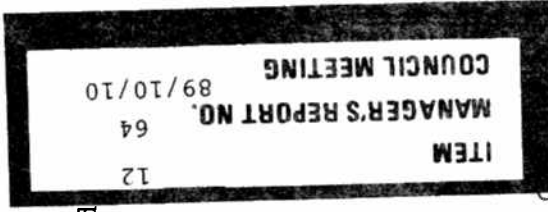
5.6 Certified copies of all policies of insurance referred to herein shall be delivered to the Lessor accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid.

Fire and Liability Insurance During Construction of Buildings

5.7 The Lessee shall effect or shall cause its contractor contractors to effect prior to the commencement of the Lessee's Work 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 their 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 Lands and from any cause, including the risks occasioned by the Lessee's Work and to an amount reasonably satisfactory to the Lessor for any bodily injury, death, property or other claims; 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 Veledrome, any other buildings or structures on the Land, and all fixtures, equipment, improvements and building materials on the Lands from time to time to the full replacement value thereof both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Veledrome and any other buildings



or structures on the Lands 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).

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Waivers of Subrogation

5.8 All insurance policies herein shall contain a waiver or waivers of subrogation against the Lessor.

REPAIRS AND MAINTENANCE

Removal of Ice and Snow from Sidewalks

6.1 The Lessee shall keep any parking lot, driveways and sidewalks on the Lands and adjacent thereto reasonably free from ice and snow in accordance with the provisions of the Burnaby Street and Traffic Bylaws and amendments thereto and re-enactments thereof, and failing that, the Lessor, although not obliged to do so, may through its agents, servants, contractors and subcontractors remove such ice and snow at the expense of the Lessee but without notice to the Lessee.

Repair of Buildings

6.2 The Lessee shall at all times throughout the Term and Renewal Terms place and keep the Lands and the interior and exterior of the Veledrome and any other buildings and structures on the Lands in a safe, clean and sanitary condition and in good and substantial repair as would a reasonable and prudent owner of same. The Lessee shall observe all health regulations and take

any necessary measures for the extermination and control of pests, vermin and infestation. The Lessor may enter and view the state of cleanliness and repair.



DAMAGE OR DESTRUCTION

Repair of Veledrome

7.1 If the Veledrome is partially or substantially or completely destroyed, the Lessee shall either:

(i) forthwith proceed to diligently replace or repair the Veledrome and all equipment and other property of any nature whatsoever that was thereon and therein at the time of such destruction, and such repair or replacement shall be to a standard equivalent to the condition of the Veledrome and such other property at the time of such destruction, or

(ii) elect to treat the Lease as terminated, in which case there shall be no compensation or other payment by the Lessor to the Lessee. It is understood and agreed that in this event the Lessor shall be entitled to receive, in priority to any amounts due to the Lessee, sufficient proceeds from insurance coverage to remove any debris and rubbish to make the Lands safe and to restore the Lands to its state and condition immediately prior to the execution of this Agreement.

INDEMNIFICATION

Indemnification of Lessor

8.1 In addition to all other provisions herein 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' and other liens, compensation and expenses of any nature whatever relating to or arising from the Lessee's enjoyment, occupation of or possession of the Lands and the Veledrome and any other buildings or structures on the Lands, and the Lessee's operations and from all actions, claims, demands, suits and judgments against the Lessor 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 the Veledrome and any other buildings or structures on the Lands or relating to or arising from the Lessee's occupation, possession or use of the Lands and Veledrome and the Lessee's operations.

Assumption of Risk

8.2 The Lessee assumes all risks in any way arising from the Lessee's use, occupation, possession or enjoyment of the Lands and the Veledrome and any other buildings or structures on the Lands.

WASTE AND NUISANCE

Lessee Not to Commit Waste

9.1 The Lessee shall not suffer, cause or permit the commission of permissive, voluntary or equitable waste to the Lands or the Veledrome.

Lessee Not to Commit Nuisance

9.2 The Lessee shall not suffer, cause or permit any nuisance on the Lands or Veledrome.



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ASSIGNING AND SUBLETTING

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Subletting by Lessee

10.1 The Lessee shall not nor will during the Term or Renewal Terms sublease the Lands, the Veledrome or any part thereof to any person, persons or corporation whatsoever without the prior consent in writing of the Lessor upon approval of the Council of the Lessor, which consent the Lessor may arbitrarily withhold.

Assignment by Lessee

10.2 The Lessee shall not nor will during the Term or Renewal Terms, either by act or by deed, assign, transfer, bargain or sell this Lease, the Lands or the Veledrome to any person, persons or corporation whatsoever without the consent in writing of the Lessor which consent the Lessor may arbitrarily withhold. In any event it is agreed that the Lessor shall withhold its consent if, in the Lessor's opinion, the prospective assignee does not have sufficient experience, capabilities or financial resources to operate the Veledrome in accordance with the terms of this Lease. Provided that any permitted assigns of the Lessee shall, concurrent with such assignment, acknowledge to being bound by all the terms and conditions of this Lease and in pursuance whereof shall execute such documents and instruments as shall be required by the Lessor.

DEFAULT BY LESSEE

Re-entry on Certain Defaults by Lessee

11.1 The Lessor and the Lessee agree that if:

(a) the Lessee shall default in the payment of rent or taxes

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or any other sums required to be paid to the Lessor or any other party by any provision of this Lease, and such default shall continue for twenty (20) days after notice in writing thereof given by the Lessor to the Lessee;

or **162**

(b) the Lessee shall default in performing or observing any of its other covenants, conditions 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 twenty (20) 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 twenty (20) days aforesaid, such extended period as is specified by the Lessor, the Lessee fails to proceed promptly after the giving of 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 Lands and the Veledrome without being liable to any prosecution or damages therefor, and may repossess and enjoy the Lands, the Veledrome and all fixtures and improvements upon the Lands and the Veledrome without such re-entry and repossession operating as a forfeiture or waiver of the rent or any other sums required to be paid by the Lessee to the Lessor, and the covenants to be performed by the Lessee to the Lessor, and the covenants to be

performed by the Lessee up to the date of such re-entry and repossession. The Term or Renewal Term shall immediately become forfeited and 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 or other indebtedness due or owing by the Lessee to the Lessor at such time and save and except for any rights or remedies against the Lessee which rights and remedies shall survive the Lease in favour of the Lessor.

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Bankruptcy and Judgments Against the Lessee

11.2 The Lessee covenants with the Lessor 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 Lessee or its assigns, or if the Lessee 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 Lessee 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 Lessee, the Term or any Renewal Term shall immediately become forfeited, and the 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 or other indebtedness due or owing by the Lessee to the Lessor at such time and save and except for any rights or remedies against the Lessee which rights and remedies shall survive this Lease in favour of the Lessor.

Condonation of Breach Not a Waiver

11.3 It is mutually agreed that any excusing, condoning or forbearance by the Lessor in respect of any default, breach or

non-observance by the Lessee at any time of any covenant, provision, condition or requirement in this Lease shall not operate as a waiver of the Lessor'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 Lessor's rights in respect of any such subsequent default or breach.

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Remedies of Lessor are Cumulative

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11.4 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

Showing of Lands and Buildings

12.1 At any time during the last twelve (12) months of the Term, or Renewal Terms if applicable, or if the Lessee is holding over, then at any time during such holding over, the Lessor may show the Lands and Veledrome during normal business hours to agents of the Lessor and to prospective purchasers or tenants and their agents and advisors.

12.2 At the end of the Term or Renewal Terms if applicable, either by forfeiture, default or lapse of time, the Lessee shall surrender the Lands and the Veledrome 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 sub-leases, licences, assignments and other agreements and rights affecting the Lands or the Veledrome or the Lessee's interest therein.

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Vacant Possession

12.3 Upon termination of the Term or Renewal Terms if applicable, hereby granted, whether by effluxion of time or otherwise, the Lessee shall peaceably surrender and deliver up vacant possession of the Lands and the Veledrome and shall leave the Lands and the Veledrome in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish, and in the state of repair required hereunder. The Lessee shall not cause any damage to the Veledrome in removing any objects therefrom.

Overholding

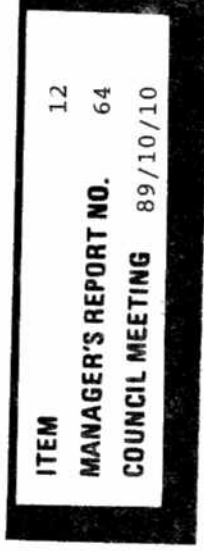
12.4 If the Lessee shall hold over after the expiration of the Term or Renewal Terms if applicable, whether by effluxion of time or otherwise, the new tenancy thereby created shall be a tenancy from month to month and not from year to year, and shall be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month and the rent then payable shall be one twelfth of the then annual rental market value of the Lands and Veledrome as determined from time to time by the Lessor.

LESSEE'S COVENANTS SURVIVE TERMINATION

13.1 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



Covenant for Quiet Enjoyment

14.1 If the Lessee pays the rent hereby reserved, the **166** property taxes and other charges, and performs the covenants and conditions herein on the Lessee's part contained, the Lessee shall and may peaceably enjoy and possess the Lands and Veledrome for the Term and Renewal Terms if applicable, without any interruption or disturbance from the Lessor or any third party lawfully claiming from or under the Lessor, subject always to the terms and conditons hereof.

RIGHTS OF LESSOR AND LESSEE

15.1 All rights and benefits and all obligations of the Lessor and the Lessee under this Lease shall be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease.

NOTICE

16.1 All notices, demands and requests which may be 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:

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

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and in the case of the Lessee addressed to:

Bicycling Association of British Columbia
1200 Hornby Street
Vancouver, B.C. V6Z 2E2

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 third 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 or postal services or other labour dispute which affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered.

MISCELLANEOUS

- 17.1 Time shall be of the essence of this Lease save as herein otherwise specified.
- 17.2 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.
- 17.3 This Lease shall not be registered in the Land Title Office and the Lessee waives any right to further documentation from the Lessor.
- 17.4 The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained herein 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.

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17.5 Words herein importing the singular number of 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; also these 168 presents shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto. Reference herein to the Lessor and the Lessee shall be deemed to include the servants, agents, contractors, subcontractors, licencees and invitees wherever the context requires.

IN WITNESS WHEREOF the Lessor and the Lessee have caused these presents to be signed under the hands of their 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 COMMON SEAL OF THE BICYCLING
ASSOCIATION OF BRITISH COLUMBIA WAS
HEREUNTO AFFIXED IN THE PRESENCE OF:

Authorized Signatory

Authorized Signatory

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"SCHEDULE A"

BICYCLING ASSOCIATION OF BRITISH COLUMBIA
1200 HORNBY STREET
VANCOUVER, BRITISH COLUMBIA V6Z 2E2

CONSTITUTION

(Including amendments made October, 1982)

1. The name of the society is the "Bicycling Association of British Columbia."
2. The purposes of the society are:
 - (a) To manage and develop bicycling for recreation, transportation and sport in British Columbia.
 - (b) To promote the development of and to conduct programs for the following:
 - (i) bicycle racing
 - (ii) bicycle recreation
 - (iii) bicycle safety and maintenance
 - (iv) bicycling as a means of transportation
 - (v) other activities related to bicycling.
 - (c) To represent British Columbia and, where applicable, administer the directives of the Canadian Cycling Association, the association officially representing Canada in the world cycling organization known as Union Cycliste Internationale.
 - (d) To work co-operatively with other community groups, agencies and organizations (public, private and professional) having similar objectives and which in any way contribute to the aims of the Society.
 - (e) To seek support and assistance from all persons and organizations interested in the promotion and development of the aims consistent with the objectives of the Society as outlined in 2 (a) and (b).

AFFIDAVIT OF WITNESS



1.

British Columbia, make oath and say:

- 1. I was present and saw this instrument duly signed and executed by
-, the party(ies) to it, for the purposes named in it.
- 2. The instrument was executed at
- 3. I know the party(ies), who is(are) 19 years old or more.
- 4. I am the subscribing witness to the instrument and am 16 years old or more.

Sworn before me at 170
in British Columbia, this day
of, 19

*Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.
NOTE—This affidavit must be sworn by a witness who is not a party to the instrument.

LAND TITLE ACT

FORM 3
(Sections 43 (b) and 44 (b))

CERTIFICATE OF ACKNOWLEDGMENT OF TRANSFEROR

I certify that on the day of, 19 at in the of

*(Whose identity has been proved by the evidence on oath of who is) personally known to me,
..... (State full name, address, and occupation)

appeared before me and acknowledged to me that he/she/they is(are) the person(s) mentioned in this instrument as a transferor (or attorney of a transferor) that his/her/their name(s) is(are) subscribed to it, that he/she/they know(s) the contents of the instrument and executed it voluntarily, and is(are) of the age of 19 years or more.

In testimony of which I set my hand and seal of office at
this day of, 19 †

*Where the person making the acknowledgment is personally known to the officer taking it, strike out the words in brackets.
† Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.

LAND TITLE ACT

FORM 6
(Section 46)

PROOF OF EXECUTION BY CORPORATION

I certify that on the day of, 19 at Burnaby.....
in British Columbia,
~~† Whose identity has been proved by the evidence on oath of~~

..... (State full name, address, and occupation) who is) personally known to me, appeared

before me and acknowledged to me that he/she is the authorized signatory of THE CORPORATION
OF THE DISTRICT OF BURNABY..... and that he/she is the person who subscribed his/her name and affixed the seal of the corporation to the instrument, that he/she was authorized to subscribe his/her name and affix the seal to it, (and that the corporation existed at the date the instrument was executed by the corporation.)

In testimony of which I set my hand and seal of office at Burnaby, B.C.....
this day of, 19 †

*Where the person making the acknowledgment is personally known to the officer taking it, strike out these words in brackets.
† These words in brackets may be added, if the applicant wishes the registrar to exercise his discretion under section 162 (3) and to call for further evidence of the existence of the corporation.
‡ Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.

LAND TITLE ACT

FORM 2
(Sections 43 (a) and 44 (a))

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AFFIDAVIT OF WITNESS

I, in
British Columbia, make oath and say:

- 1. I was present and saw this instrument duly signed and executed by
....., the party(ies) to it, for the purposes named in it.
- 2. The instrument was executed at
- 3. I know the party(ies), who is(are) 19 years old or more.
- 4. I am the subscribing witness to the instrument and am 16 years old or more.

Sworn before me at day
in British Columbia, this day
of, 19

* A Commissioner for Taking Affidavits
*Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.
NOTE—This affidavit must be sworn by a witness who is not a party to the instrument.

LAND TITLE ACT
FORM 3
(Sections 43 (b) and 44 (b))

CERTIFICATE OF ACKNOWLEDGMENT OF TRANSFEROR

I certify that on the day of, 19, at in the of
.....
*(Whose identity has been proved by the evidence on oath of
....., who is) personally known to me,
.....
(State full name, address, and occupation)

appeared before me and acknowledged to me that he/she/they is(are) the person(s) mentioned in this instrument as a transferor (or attorney of a transferor) that his/her/their name(s) is(are) subscribed to it, that he/she/they know(s) the contents of the instrument and executed it voluntarily, and is(are) of the age of 19 years or more.

In testimony of which I set my hand and seal of office at
this day of, 19

*Where the person making the acknowledgment is personally known to the officer taking it, strike out the words in brackets.
† Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.

LAND TITLE ACT

FORM 6
(Section 46)

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PROOF OF EXECUTION BY CORPORATION

I certify that on the day of, 19, at
in British Columbia,
(*whose identity has been proved by the evidence on oath of
....., who is) personally known to me, appeared
before me and acknowledged to me that he/she is the authorized signatory of

..... and that he/she is the person who subscribed his/her name and affixed the seal of the corporation to the instrument, that he/she was authorized to subscribe his/her name and affix the seal to it, (and that the corporation existed at the date the instrument was executed by the corporation.)

In testimony of which I set my hand and seal of office at
this day of, 19

† A Commissioner for Taking Affidavits
*Where the person making the acknowledgment is personally known to the officer taking it, strike out these words in brackets.
† These words in brackets may be added, if the applicant wishes the registrar to exercise his discretion under section 162 (5) not to call for further evidence of the existence of the corporation.
‡ Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.

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DATED: _____

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THE BICYCLING ASSOCIATION
OF BRITISH COLUMBIA

AND

THE CORPORATION OF THE DISTRICT
OF BURNABY

L E A S E

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