

D13722

SUBSTITUTE FORM C

Date: 5 December 1974

Applicant: The Corporation of the District of Saanich, 770 Vernon Avenue, Victoria, B.C.

Nature of Interest: hand lease contract with bank (see MZ 3320) MZ 91179 (see MZ 91178)

386-2241 Agent

THIS CONTRACT is made as of the day of 1974.

BETWEEN: THE CORPORATION OF THE DISTRICT OF SAANICH, 770 Vernon Avenue, Victoria, B. C.

(hereinafter called "the Municipality")

OF THE FIRST PART

AND: PENTHOUSE DEVELOPMENTS INC., 100 - 895 Fort Street, Victoria, B. C.

(hereinafter called "the Owner")

OF THE SECOND PART

WHEREAS:

A. The Owner is the registered owner of an estate in fee simple of all and singular that certain parcel or tract of land and premises, situate, lying and being in the Municipality of Saanich, in the Province of British Columbia; and being more particularly known and described as:

Lot 2 Section 57 Victoria District Plan 14222

(hereinafter called "the land");

B. The land is located within an area which has been heretofore designated as a development area by the Council of the Municipality;

RECEIVED PLANT REGISTRAR OFFICE VICTORIA, B.C.

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Form "C" Land Registry Act 1966, s. 501 MEMORANDUM OF REGISTRATION day of 19 5 DEC 1974 H. T. KENNEDY, Registrar of the Victoria Land Registration District

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- C. The Council of the Municipality, pursuant to Section 702A of the "Municipal Act" may, notwithstanding any by-law of the Municipality, or Section 712 or 713 of the "Municipal Act" upon the application of an owner of land within a development area designated as such by by-law of the Municipality, enter into a land use contract containing such terms and conditions for the use and development of the land as may be mutually agreed upon and thereafter the use and development of that land shall be in accordance with such land use contract;
- D. The Owner has presented to the Municipality a scheme of use and development of the land and has made application to the Municipality to enter into this land use contract under the terms, conditions and for the consideration hereinafter set forth;
- E. The Owner has obtained the consents of all persons having a registered interest in the land as set out in Schedule "A" hereto to the registration of this contract in the Victoria Land Registry Office with priority over their respective interests, which consents are attached to the said Schedule "A" hereto;
- F. The Council of the Municipality having given due regard to the considerations set forth in Section 702(2) and 702A(1) of the "Municipal Act" has agreed to the terms, conditions and consideration herein contained;
- G. The Owner acknowledges that it is fully aware of the provisions and limitations of Section 702A of the "Municipal Act" and the Municipality and the Owner mutually acknowledge and agree that the Council of the Municipality could not enter

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into this Agreement until the Council held a public hearing in relation to this Agreement, in the manner prescribed by law, and has duly considered the representaitons made and the opinions expressed at such hearing, and unless at least two-thirds of all members of the Council vote in favour of the Municipality entering into this Contract;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the conditions and covenants hereinafter set forth, the Municipality and the Owner covenant and agree as follows:

1. The land, including the surface of water, and any and all buildings and structures erected thereon, thereover or therein shall be used for the purpose specified in Schedule "B" hereto and for none other.
2. No building or structure shall be constructed, reconstructed, altered, moved or extended upon the land except in compliance with the plans and specifications noted thereon which said plans are attached as Schedule "C" hereto, PROVIDED HOWEVER that minor alterations to the said plans and specifications which do not substantially alter this work may be permitted and approved by the Municipal Engineer.
3. No sign shall be erected upon the land or any building or structure thereon except in compliance with the regulations for Sign District "A" in Sign By-law Number 2457 of the Municipality.
4. Off street parking and loading spaces shall be provided, located and constructed in accordance with the plans set out

- in Schedule "C" hereto, PROVIDED HOWEVER that minor alterations to the said plans which do not substantially alter this work may be permitted and approved by the Municipal Engineer.
5. All buildings and structures shall be constructed strictly in compliance with and according to the said plans and specifications set out in Schedule "C" hereto, PROVIDED HOWEVER that minor alterations to the plans which do not substantially alter this work may be permitted and approved by the Municipal Engineer.
 6. All landscaping, surface treatments, fences and screens shall be constructed, located, provided and maintained in compliance with and according to the said plans and specifications set out in Schedule "C" hereto, PROVIDED HOWEVER that minor alterations to the plans which do not substantially alter this work may be permitted and approved by the Municipal Engineer.
 7. All utilities, including water, sewer, gas, telephone and electricity, shall be placed, provided and constructed in compliance with and according to the plans and specifications noted thereon which said plans and specifications are attached as Schedule "D" hereto, PROVIDED HOWEVER that minor alterations to the plans which do not substantially alter this work may be permitted and approved by the Municipal Engineer.
 8. All highways, lanes and walkways, including drainage, surfacing, curbs, gutters, street lighting, boulevards and street signs shall be provided, located and constructed in compliance with and according to the plans and specifications

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noted thereon which said plans and specifications are attached as Schedule "E" hereto, PROVIDED HOWEVER that minor alterations to the plan which do not substantially alter this work may be permitted and approved by the Municipal Engineer.

9. Notwithstanding anything elsewhere contained herein, if during the course of construction or erection of any of the things to be constructed or erected as aforesaid, it shall be made to appear to the Municipal Council for the time being of the Municipality that it is expedient or desirable in the interests of both the public and the Owner that departures from the applicable plans and specifications hereinbefore referred to, having no substantial effect upon the essential nature or character of the said things to be constructed or erected as aforesaid should be permitted in order to meet the requirements of generally accepted design and engineering standards or practices, or to comply with building or fire regulations or with any other requirements of any authority having jurisdiction in the premises the Municipal Council may, in its absolute discretion, permit such departures.
10. The entire cost of the development of the land including the provision of all services set out in paragraphs 4 to 7 hereof and the provision and construction of all items set out in paragraph 8 hereof shall be paid for by the Owner.
11. All works and services, buildings, structures, pipes and fixtures and development constructed, placed or carried out pursuant to paragraph 8 hereof, shall, upon acceptance by the Municipality in writing, become the property of the

Municipality free and clear of any claim by the Owner or any person claiming through the Owner and the Owner shall save harmless the Municipality from any such claim.

12. The Municipality shall, from the date of acceptance, become solely responsible for the operation, upkeep and maintenance of any works and services and any building, structure, pipes and fixtures or development accepted by it pursuant to paragraph 12 hereof, but nothing herein contained shall be deemed to require the Municipality to operate, maintain or repair such works and services, buildings, structures, pipes, fixtures or development in any manner or to any extent different from its obligations in relation to similar works, services, buildings, structures, pipes, fixtures or developments constructed by it out of its general municipal funds.
13. Unless the Owner shall have commenced the development of the land in accordance with this contract within eleven (11) months from the date hereof, this contract may be terminated forthwith at the option of the Council of the Municipality. For the purposes of this paragraph the development shall be deemed to have been commenced when the value of construction or erection undertaken by the Owner in the land, in accordance with this contract, shall exceed \$10,000.00 as certified by the Engineer of the Municipality.
14. Except as otherwise provided in this Agreement the lands, buildings and structures and the development thereof shall comply with all statutes, regulations, by-laws, and ordinances from time to time in force in the District

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of Saanich, and without limiting the generality of the foregoing, the development of all buildings and structures shall be subject to the District of Saanich Building and Plumbing By-law, being By-law No. 3520, and the Owner hereby agrees to apply for any permits which the Municipality's Development Engineer may require pursuant to the said Building and Plumbing By-law prior to the erection of any buildings or structures.

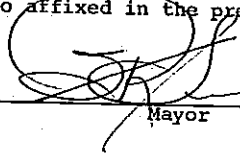
15. Before a building permit is issued for the development of the land, the Development Engineer of the Municipality may require the Owner to provide to the Municipality a performance bond or to make other financial arrangements which in the opinion of the said Development Engineer will guarantee substantial completion of the development in accordance with this contract within two years from the date of issuance of a building permit.
16. This agreement shall be registered in the Land Registry Office in the City of Victoria as a first charge against the land having priority over any and all other charges, encumbrances and liens registered against the land save only those certain charges specified in Schedule "F" hereto and shall have no force or effect unless and until it has been so registered but upon registration as aforesaid shall have the force and effect of a restrictive covenant running with the land, PROVIDED HOWEVER that if the Municipality shall fail or neglect to apply for registration of the same within the period of three (3) clear days after the Owner shall have made written demand in that behalf upon the Municipality, the Owner may thereafter apply as agent for the Municipality without further reference to or authority from the Corporation.

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- 17. Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.
- 18. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed as of the day, month and year first above written.

THE CORPORATE SEAL OF THE CORPORATION OF THE DISTRICT OF SAANICH was hereunto affixed in the presence of:



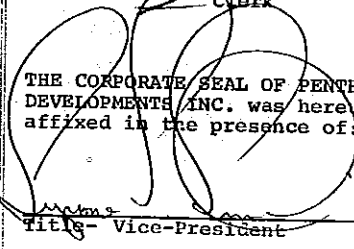
 Mayor

(seal)



 Clerk

THE CORPORATE SEAL OF PENTHOUSE DEVELOPMENTS INC. was hereunto affixed in the presence of:



 Title- Vice-President

(seal)



 Title- Secretary-Treasurer

