

ATTACHMENT H LAND USE CONTRACT NO. F90666

Substitute Form "C"
Date: November 2, 1977 F90666
Declared Value: \$1.00
C.T. #F38641
Nature of Interest: Land
Use Contract

Applicant: *[Signature]*
Agent for
GREER & SPROULE
BARRISTERS & SOLICITORS
17 Church Street, P. O. Box 10
NANAIMO B.C. V9R 5K9
753-6135

CITY OF NANAIMO

[Signature]

THIS AGREEMENT made the 13th day of October , A.D. 1977.

8/11/77
10.11.77

BETWEEN:

15/11/77
Mon Rec of

CITY OF NANAIMO
455 Wallace Street,
Nanaimo, British Columbia

(hereinafter called "the Municipality")

OF THE FIRST PART

AND:

KLAUS GERICK, electrician, and
MONICA MAXINE GERICK, his wife, both of
R.R. #1, Cinnibar Drive,
Nanaimo, British Columbia

(hereinafter called "the Developer")

OF THE SECOND PART

WHEREAS 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 bylaw of the Municipality, enter into a Land Use Contract containing such terms and conditions for the use and development of land as may be agreed upon with the Developer and thereafter the use and development of the land shall be in accordance with the Land Use Contract.

AND WHEREAS the Developer has presented to the Municipality a scheme of use and development of the within described lands and premises that would be in contravention of a By-law of the Municipality or Section 712 or 713 of the Municipal Act or both and has requested that the COUNCIL of the Municipality enter into the Contract under the terms, conditions and further consideration hereinafter set forth.

AND WHEREAS the COUNCIL of the Municipality, having had due regard for the considerations set forth in Division 111 of Part XXI of the "Municipal Act", has agreed to the terms and conditions and the consideration herein contained.

AND WHEREAS a Land Use Contract is deemed to be a Zoning By-law for the purposes of the "Controlled Access Highways Act" and if the land is so situated that it is subject to such "Act", the approval of the Minister of Highways to the use set forth in this Agreement must first be obtained before the Municipality can enter into same.

AND WHEREAS a Land Use Contract may not deal with any lands designated "Flood Plain" on the Official Regional Plan, until the said Contract is approved by the Minister of Municipal Affairs.

AND WHEREAS the Developer acknowledges that he is fully aware of the provisions and limitations of Sections 702A of the "Municipal Act" and the Municipality and the Developer mutually acknowledge and agree that the COUNCIL of the Municipality cannot enter into this Agreement until the COUNCIL has held a Public Hearing thereon, in the manner prescribed by law, has duly considered the representations made and the opinions expressed at such hearing, and unless two-thirds of all of the 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 Developer covenant and agree as follows:

1. In this Agreement, unless the context otherwise requires:

Definitions

"Complete" or "Completion" or any variation of these words when used with respect to the work or works referred to herein shall mean completion to the satisfaction of the Planning Director of the Municipality when so certified by him in writing.

"Contract" or "Agreement" shall be construed to mean this Agreement.

"Municipal Engineer" shall be construed to mean and include the Municipal Engineer for the Municipality and his duly authorized assistants or such Consulting or other Professional Engineers as may be appointed to act for the Municipality.

"Planning Director" shall be construed to mean and include the Planning Director for the Municipality and his duly authorized assistants or such Consulting or other Professional Engineers as may be appointed to act for the Municipality.

"Work" or "Works" or any variation of these words shall be construed to mean and include all work required to be done for the setting-out, the execution and the completion of this Agreement to the satisfaction of the Municipality.

"Building Inspector" shall be construed to mean and include any Building Inspector employed

by the Municipality and any duly authorized assistants or such Consultants as may be appointed to act for the Municipality.

"Average Finish Grade Line" shall mean the average elevation of the perimeter of the sides of the building or structure measured perpendicularly to the highest part of the building excluding television antenna aerials and chimneys.

Land included
in Development

2. The Developer is the Registered Owner of an interest in all and singular those certain parcels or tracts of land and premises situate, lying and being in the City of Nanaimo, in the Province of British Columbia, and more particularly known and described as:

Lot B, Section.1, Nanaimo
District, Plan 15272

(hereinafter called the "said lands")

3. The Developer agrees to carry out the work and construct, locate, provide and develop the said lands, structures, buildings, works, services, developments and facilities as

proposed in the application a true copy of which is annexed hereto and marked Schedule "A" and in accordance with the plans and specifications annexed hereto and marked Schedule "B" and for the purposes specified in Schedule "C" annexed hereto and to complete and pay for the entire cost of the completion of such development by the Completion Date specified herein.

Conditions
precedent to
development of
land

4. The Municipality will permit the Developer to carry out and perform all of the work contemplated by this Agreement upon condition that:
 - (a) The Developer proceeds without delay after the approval of this Contract to develop the said lands as proposed in paragraph 3 hereof;
 - (b) Whether or not this Contract is finally approved by the Municipality, the Developer will pay to the Municipality upon demand any reasonable legal and engineering fees and disbursements incurred for the negotiation, investigation, preparation and registration of this Agreement;
 - (c) All other terms and conditions of this Agreement including all of the applicable By-laws and regulations of the Municipality in force from time to time during the currency of this Agreement are complied with by the Developer.

Consent of
Encumbrancers

5. The Developer has obtained or shall, prior to or upon the approval of this Contract by the Municipality, obtain the consent of all persons having a registered interest in the said lands, to the provisions of this Agreement and to registration of the same in the Land Registry Office at Victoria, British Columbia in priority to such interest and have each of such persons execute the form of Consent set forth in Schedule "D".

Permitted Uses

6. The land, including the surface of water thereon and any and all buildings or structures erected thereon, thereafter or therein, shall be used for the purposes specified in Schedule "C" annexed hereto and for no other purpose whatsoever.
7. Every building or structure from time to time constructed, reconstructed, altered, moved or extended upon the said lands shall be sited in accordance with the provisions of and in conformity with the plans and specifications marked Schedule "B" annexed hereto, provided that minor alterations to the Plan which do not substantially alter the concept of the development may be permitted if approved

in writing by the Planning Director.

Height of
Buildings
and Structures

8. No buildings, structures or improvements erected on the said lands shall exceed forty (40) feet in height measured from the average finish grade line.

Off-Street
Parking

9. All off-street parking and loading shall be provided and maintained in accordance with the specifications outlined in Schedule "E" annexed hereto.

Landscaping,
Surface Treatments,
Fences, and
Screens

10. All landscaping, surface treatments, fences and screens shall be constructed, located, provided and maintained in accordance with the provisions of and in conformity to the plans and specifications marked Schedule "B", annexed hereto, provided that minor alterations to the plan which do not substantially alter the concept of the development may be permitted if approved in writing by the Planning Director.

Utilities

11. The Developer agrees to provide and supply all utilities and services to the lands entirely at its own expense, except for those which

by agreement with the Municipality may be assumed by the Municipality.

Signs

12. The Developer may construct and erect signs but in doing so shall comply with the relevant provisions of the Municipalities sign By-law.

Completion Date

13. The Developer will complete construction of the development provided for herein, including all appurtenant works, services, developments and facilities in accordance with the provisions of this Agreement (subject to such permitted alterations as may be made in any of said Schedules) by December 31, 1981 (hereinafter called "the Completion Date") provided always that if the Developer is unable to complete the construction of the said works by the Completion Date through circumstances outside the control of the Developer then the Completion Date may be extended by a period of time equivalent to the period of delay resulting from the circumstances outside the control of the Developer.

Schedules
Incorporated

14. The said Schedules "A" to "E" inclusive hereinbefore referred to are hereby incorporated into and made part of this Agreement.

15. Notwithstanding any provisions of this Contract hereinbefore contained and notwithstanding the provisions of the Building By-law, and amendments thereto of the Municipality and of any provisions of the "Municipal Act", R.S.B.C. 1960, Chapter 255 and amendments thereto, the Developer covenants and agrees that the Municipality may withhold the granting of any occupancy permit for the occupancy and/or use of any building or part thereof, constructed upon the said lands until all of the works herein have been completed to the satisfaction of the Planning Director.

Detailed Plans,
Specifications
and Working
Drawings

16. The Developer hereby acknowledges that while detailed plans, specifications and working drawings for the construction of the works and services to be built upon the land are not called for in this Agreement, this fact shall not be deemed to preclude the necessity and obligation of the Developer to submit such detailed plans, specifications and working

drawings to the Building Inspector of the Municipality and upon approval thereof by the said Building Inspector of obtaining from the Municipality a Building Permit for such work.

Indemnification
of Municipality

17. The Developer covenants to save harmless and effectually indemnify the Municipality against:
- (a) All actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomever brought by reason of the construction of the said works.
 - (b) All expenses and costs which may be incurred by reason of the execution of the said works resulting in damage to any property owned in whole or in part by the Municipality or which the Municipality is legally bound in any way or to any degree to construct, repair or maintain.
 - (c) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, workmen's compensation assessments, unemployment insurance, Federal or Provincial Tax, check-off and for encroachments owing to mistakes in survey.

Cancellation
of Agreement

18. In addition to any other remedies available to the Municipality, in the event that the Developer fails to use and develop the whole of the said lands in accordance with the

terms of this Agreement, this Contract may, at the option of the Municipality, be cancelled and thereby rendered null and void.

Time

19. Time shall be the essence of this Agreement.

Municipal
Representations
etc.

20. It is understood and agreed that the Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those contained in this Agreement.

Registration

21. This Agreement shall not have any force or effect unless and until it is registered as a first charge (except for mineral or undersurface rights registered under number 265028-G) in the Land Registry Office at Victoria, British Columbia against the said lands and when so registered shall be construed as running with the said lands pursuant to the provisions of Section 702A (4) of the "Municipal Act".

Interpretation

22. Wherever the singular or masculine is used herein, the same shall be construed as meaning

the plural, feminine or body corporate or politic where the Contract or the parties so require.

Binding Effect

23. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Notices

Any notice, request or demand provided for herein shall be sufficiently given or made if mailed by registered mail in the City of Nanaimo, in the Province of British Columbia, postage prepaid, addressed if to the Municipality at:

455 Wallace Street,
Nanaimo, British Columbia

and to the Developer at:

Cinnibar Drive,
R.R. #1, Nanaimo, British Columbia

IN WITNESS WHEREOF the said parties to this Agreement have hereunto set their hands and seals the day and year first above written.

THE CORPORATE SEAL of the Municipality was hereunto affixed in the presence of:

[Handwritten Signature]
MAYOR

[Handwritten Signature]
CITY CLERK

SIGNED, SEALED AND DELIVERED)
BY KLAUS GERICK and MONICA)
MAXINE GERICK in the presence)
of:)

[Handwritten Signature]
Name

[Handwritten Signature]
KLAUS GERICK

Address **DOUGLAS M. GREER**
17 CHURCH STREET
P. O. BOX 10
MANASSAS, P.C. 1018 5K4
SOLICITOR

[Handwritten Signature]
MONICA MAXINE GERICK

Occupation

SCHEDULE "A"

114. (14)

Klaus Gerick

R. R. #1, Cinnabar Dr.

Nanaimo, B. C.

March 21, 1977

The Mayor and City Council,
City of Nanaimo,
City Hall,
Nanaimo, B. C.

*W.G.
M.L.*

Your Worship, and Members of Council,

Enclosed, please find our application and plans, for a land use contract on our property on Comox Road.

The property, at present is zoned, multiple dwellings. We would like to construct an office and professional building with provision on the ground floor for related retail outlets.

You will note, on the enclosed plan, that underground parking has been provided for, with entrance from the east side. I have received verbal approval from the owners of the Tally Ho Motor Hotel for use of their 30ft. access road. Written approval will be forthcoming. Mr. Archie Leach, indicated to me that he feels that this type of development would be an asset to their operation.

The proposal is for a three story building, with 5,120 sq. ft. of rental area, on the ground floor, and 5,600 sq. ft. on the 2nd. and 3rd. floors.

RECEIVED

MAR 23 1977

CITY OF NANAIMO
COPY TO _____

There is provision for 35, off street parking stalls. The proposed building is to be constructed of concrete block.

Yours very truly,


Klaus Gerick

CITY OF NANAIMO

APPLICATION FOR LAND USE CONTRACT

Mr. Klaus and Monica Gerick, as owners of, Lot W, Block 48, Plan 15272,
on Comox Rd., Nanaimo
(as Owner or Agent of the Owner(s))

hereby make application pursuant to the provisions of the Land Use Contract Procedure By-law for a Land Use Contract to proceed with a development project, and present herewith as part of this application plans and particulars respecting the several clauses and schedules set out in Schedule 1 of the Land Use Contract Procedure By-law, and which fully describe the development project applied for.

I/WE also agree to pay all legal and other costs, involved with the preparation of a land use contract.

Klaus and Monica Gerick Owner or Agent
Name of Applicant

Address: R. R. #1, Cinnabar Dr. Telephone No. 754-4958
Nanaimo, B. C.

Klaus Gerick
Signature of Applicant

SCHEDULE "D"

Plans and Specifications

SCHEDULE "C"

Permitted Uses

The use of the land and all buildings and structures to be erected thereon shall be restricted to:

1. Retail Stores and Offices

2. 1 Apartment Dwelling Unit.

Handwritten notes:
A
W.D.
7/1/1

SCHEDULE "D"

CITY OF NANAIMO
LAND USE CONTRACT

CONSENT

KNOW ALL MEN BY THESE PRESENTS THAT:

GULF TRADING CORP. LTD.
(Incorporation Number 96,982)

of:

17 Church Street,
Nanaimo, British Columbia

being the holder of a charge by way of a Mortgage registered in the Land Registry Office at the City of Victoria, British Columbia, under Number F53919 against ALL AND SINGULAR that certain parcel or tract of land and premises being in the City of Nanaimo, in the Province of British Columbia known and described as:

Lot B, Section 1,
Nanaimo District, Plan 15272

in consideration of the sum of ONE (\$1.00) DOLLAR hereby agrees and consents to the registration of the Land Use Contract made between the registered owner

of the said lands annexed hereto having the same force and effect as a Restrictive Covenant running with the land and against the above described lands in priority to the said Mortgage in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

THE COMMON SEAL OF GULF TRADING CORP. LTD. was hereunto affixed in the presence of:

[Handwritten signature]

Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 19th day of October, 19 77,
at Nanaimo, in the Province of British Columbia,
oath of James C. Goodwin (whose identity has been proved by the evidence on
appeared before me and acknowledged to me that he is the Treasurer, who is) personally known to me,
Gulf Trading Corp. Ltd., and that he is the person
who subscribed his name to the annexed instrument as Treasurer of the said
Gulf Trading Corp. Ltd. and affixed the seal of the
company

to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
at Nanaimo in the Province of
British Columbia, this 19th day of October
one thousand nine hundred and seventy-seven.

WILLIAM BERESFORD NEY

A Commissioner for taking Affidavits
for British Columbia

[Notary Seal]
A Notary Public for the Province of British Columbia.
A Commissioner for taking Affidavits for British Columbia.

SCHEDULE "E"

Off-Street Parking and Loading Requirements:

(1) Size:

Each space shall be of a minimum size of 9' X 18' and shall be located on site.

(2) For Retail Stores:

To be provided and maintained in ratio of 5.5 spaces for each 1000 square feet of gross lease area.

(3) For Offices:

To be provided and maintained in ratio of 3.5 spaces for each 1000 square feet of gross lease area.

(4) For Apartments:

To be provided and maintained in ratio of 1.5 spaces for each apartment unit.

14
11/1