

11/2/77

C/T F18231

THIS LAND USE CONTRACT made in triplicate the 30th day of November, 1976,

BETWEEN:

**F19190**

THE CORPORATION OF THE DISTRICT OF SAANICH, a municipality constituted pursuant to the laws of the Province of British Columbia and having a business office situate at 770 Vernon Avenue in the City of Victoria, Province of British Columbia,

hereinafter called the "Municipality"

OF THE FIRST PART

AND:

JOHN ADAMS TRAUNWEISER, of 2052 Swanson Place, in the City of Victoria, Province of British Columbia, and TRAUNWEISER MOTELS LTD., a company duly incorporated pursuant to the laws of the Province of British Columbia, and having its registered office situate on the 8th Floor, Bentall Building, 1070 Douglas Street, in the City of Victoria, Province of British Columbia,

hereinafter jointly and severally called the "Owner"

OF THE SECOND PART

WHEREAS it is provided by Section 702A(2) of the "Municipal Act, R.S.B.C. 1960, Chapter 255, as amended, that a municipal council may, by by-law, amend a zoning by-law to designate areas of land within a zone as development areas;

AND WHEREAS the Owner is the registered owner, or under a replotting scheme presently being undertaken by the Municipality, about to become 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, more particularly described as Lot A as shown on that certain plan of subdivision entitled "PLAN OF SUBDIVISION PREPARED PURSUANT TO THE REPLOTTING PROVISIONS OF THE MUNICIPAL ACT OF THE AREA FORMERLY KNOWN AS: LOTS 15A, 16A, 17A, 18A, AND PART OF LOT 24A, PLAN 88, TOGETHER WITH LOTS 2, 3 AND 4, PLAN 4980, TOGETHER WITH LOTS 1, 2 AND 3, PLAN 5930, TOGETHER WITH LOTS 1, 2 AND 3, PLAN 12155, TOGETHER WITH SAN SEBASTION PLACE ADJACENT THERETO IN SECTIONS 11 AND 12 AND LOT 143, VICTORIA DISTRICT, THE WHOLE SHOWN OUTLINED IN RED ON PLAN \_\_\_\_\_ R", which said Plan of Subdivision was sworn by Robin Carey Le Garff, British Columbia Land Surveyor, on the 21st day of June, 1976, a copy of said

Plan of Subdivision being attached hereto as Schedule "B", (hereinafter called the "land").

AND WHEREAS the land is situate within a zone defined and delineated by By-law Number 3366 "Zoning By-law 1972", being a by-law of the Municipality and the municipal council of the Municipality has by a By-law Number 3763, "Zoning By-law 1972, Amendment By-law 1975 Number 34" amended the said By-law Number 3366 to designate the land as a development area, and the land is now referred to as development area number 14;

AND WHEREAS it is provided by Section 702A(3) of the said Municipal Act, as amended, that upon the application of an owner of land within a development area or his agent, the municipal council may, by by-law, notwithstanding any by-law of the Municipality, or Section 712 or 713 of the said Municipal Act, as amended, 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 that thereafter, notwithstanding any by-law of the Municipality or the said sections 712 and 713, the use and development of the land shall be in accordance with the land use contract;

AND WHEREAS the Owner has presented to the Municipality a proposal for the use and development of the land that would be in contravention of the said By-law Number 3366 or Section 712 or 713 of the said Municipal Act, as amended, or both, and has requested that the municipal council of the Municipality enter into this land use contract pursuant to the terms, conditions and for the consideration hereinafter set forth;

AND WHEREAS the municipal council of the Municipality, having given due consideration to the criteria set forth in Sections 702(2) and 702A (1) of the said Municipal Act, as amended, has agreed to the terms, conditions and considerations herein contained;

AND WHEREAS it is provided by Section 702A(6) of the said Municipal Act, as amended, that a municipal council shall not enter into a land use contract until a public hearing has been held and notice has been published in the manner prescribed in Section 703 of the Municipal Act, as amended, and except upon the affirmative vote of at least two-thirds of all members of the municipal council;

AND WHEREAS the municipal council of the Municipality has held a public hearing with respect to the matter of this land use contract, and notice has been duly published in the manner prescribed;

AND WHEREAS this land use contract and the entering into of the same by the Municipality have been duly authorized by By-law Number 3857 which by-law was adopted by an affirmative vote of at least two-thirds of all the members of the municipal council of the Municipality at the time and in the manner prescribed by the said Municipal Act, as amended;

AND WHEREAS it is provided by Section 702(4) of the Municipal Act, as amended, that a land use contract entered into as aforesaid shall have the force and effect of a restrictive covenant running with the land and shall be registered in the Land Registry Office by the Municipality;

AND WHEREAS the parties hereto agree that this land use contract shall be registered as a restrictive covenant in the Land Registry Office in the City of Victoria, in the Province of British Columbia, as a first charge against the land;

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, namely:

1. USE OF LAND:

1.01 The land, for a term of SEVENTY-FIVE (75) YEARS commencing upon the date of execution hereof by the Municipality, shall be utilized only for the construction, reconstruction, maintenance, and use and enjoyment of the improvements shown and described on the drawings and specifications both initialled by the Planning Director, and attached hereto as Schedule "A", and numbered Drawings A-1 to A-12, and hereinafter called the "Drawings and Specifications"; and without restricting the generality of the foregoing, all of the said improvements shall be provided, placed, and constructed strictly in accordance with the Drawings and Specifications.

1.02 The Land shall be used only for the use and enjoyment of the said improvements as multiple residential housing as indicated by the Drawings and Specifications.

1.03 Notwithstanding anything elsewhere contained herein, if before application for a building permit pursuant to this contract,

it shall be made to appear to the Municipal Engineer of the Municipality that it is expedient or desirable in the interests of both the public and the Owner that minor 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, or to overcome problems of design or construction created by particular soil or terrain conditions, or for any other reason that may to the said Municipal Engineer appear necessary or expedient, the said Municipal Engineer may permit such departures; and in the event of substantial repairs or reconstruction becoming necessary after completion of the work, the said Municipal Engineer may permit such departures and the said Municipal Engineer before granting any approval under this paragraph may request the advice of the Municipal Council of Saanich.

1.04 The landscaping, surface treatments, fences and screens shall be constructed, located, placed and maintained in compliance with and according to the Drawings and Specifications. Notwithstanding the aforementioned, the Owner may, at any time, with the consent of the Municipal Engineer, add to the quality and quantity of the said landscaping, surface treatments, fences and screens. Provided, further, that the outdoor lighting, to be located, placed and maintained upon the said lands shall be in such manner and form as may from time to time be approved by the Municipal Planner.

1.05 Notwithstanding Article 1.02 hereof, the Municipality acknowledges and agrees that the amenity area referred to in the Drawings and Specifications as the Recreation Building may be deleted or altered at any time during the term of this contract, provided that prior to construction any alteration shall be subject to the provisions of Article 1.03 hereof.

1.06 The Municipality covenants and agrees with the Owner that notwithstanding anything to the contrary contained in the Zoning By-law of Saanich, being By-law No. 3366, or any amendment thereto or any by-law or by-laws that may hereafter be adopted in substitution for or in place thereof, but subject always to this contract, the



Owner may lawfully undertake the development and use of the land in the manner and for the purpose set forth in this Contract.

2. PARK

2.01 The Municipality acknowledges that it has been allotted those portions of the lands shown outlined in yellow on the paper print of the subdivision plan attached hereto as Schedule "B", and hereinafter called the park land, as "Surplus Real Property" as referred to in Section 827(6) of the said Municipal Act.

2.02 The Municipality shall use the park land only as a public park and walkway limited to passive activities and restricted from vending of any kind whatsoever, and the Municipality shall provide, place and construct at its expense the improvements to the park land, provided that alterations to the said improvements may be carried out from time to time as the Municipality shall decide. The Municipality shall endeavour to substantially complete construction of the said improvements within one year from the date hereof but if such construction is delayed, due to lack of available funds or any other cause, then it is understood and agreed that the Municipality's only obligation hereunder is to substantially complete with reasonable dispatch when it is in a position to do so.

2.03 The Municipality at its expense shall maintain and keep clean the park land for the use, enjoyment and recreation of the public from time to time.

2.04 The Municipality shall not permit the park land to be used for any purpose other than a public park and walkway.

✓ 2.05 The Owner hereby agrees to execute and deliver to the Municipality at any time after registration hereof a licence to the Municipality, its servants, agents and all others the licensees of the Municipality a licence to pass and repass over and across a portion of the lands with necessary tools, equipment and materials for the purpose of ingress and egress to a portion of the Gorge Waterway frontage adjacent to the said lands to construct, operate, maintain, remove and replace a public walkway and ancillary works along the entire length of the said frontage. The Municipality shall covenant that it will exercise the rights therein granted in a reasonable manner, that it will compensate the Owner for damages caused by the Municipality in the exercise of such rights, and that if the surface of the land is disturbed in the exercise of such rights it will restore the same as near as is reasonably possible to the condition thereof before such disturbance. The said licence shall be in a form approved by the

Solicitor for the said Municipality.

3. SEWER EASEMENTS:

3.01 The Owner, forthwith upon written request by the Municipality, shall execute and deliver to the Municipality a sewer easement in favour of the Municipality in a form prepared by the Municipal Solicitor.

3.02 The Municipality, forthwith upon the operation of the sewer proposed for the sewer easement contemplated in Article 3.01 hereof, shall register at the Land Registry Office in the City of Victoria a release of each and every of the other then existing sewer easements no longer required over the land and in favor of the Municipality.

3.03 Upon the registration of the said releases, the Owner shall have the right to excavate and remove part or all of the sewer pipe and accessories then existing within the area of the land previously covered by the said other sewer easements.

4. SEWERS

4.01 The Municipality shall complete with dispatch the final sealed working drawings for the design and installation of the sewer trunk line commonly referred to as "the Gorge Sewer Trunk".

4.02 The Municipality shall commence the installation of the said Gorge Sewer Trunk within sixty days of tender closing and in any event not later than June 1, 1977.

4.03 The Municipality shall commence the installation of that portion of the said Gorge Sewer Trunk situate in or upon the land as soon as possible after receipt of written notice from the Owner after the first day of June, 1977, and the Municipality shall work continuously thereafter, inclement weather excepted, to complete the installation of the said portion as soon as possible.

4.04 The Municipality shall complete the installation, inspection, and testing of the said Gorge Sewer Trunk on or before the 31st day of December, 1977, and forthwith thereafter provide the Owner with operational connections from the said Gorge Sewer Trunk to the improvements constructed upon the parcels in accordance herewith, and in the event that the Municipality fails to complete all of the said sewer works, the Owner shall have the absolute right to complete the said sewer works as expeditiously as possible and thereafter to charge all reasonable and appropriate costs and expenses resulting therefrom to the Municipality and the Municipality shall pay such costs and expenses within SIXTY (60) days thereafter.

4.05 The Owner shall pay to the Municipality the sum of THREE HUNDRED SIXTY THOUSAND DOLLARS (\$360,000.00) towards the provision of normal off-site municipal services for connection to the said lands within THIRTY (30) DAYS after receipt of the Municipal Engineer's sealed certificate, so that the Owner may develop the lands to the full extent as set out by this land use contract, PROVIDED THAT any and all contributions to the Municipality by way of provincial and/or federal governmental grant or loan in relation to the number of units constructed on the lands shall be applied as a reduction against the said sum of THREE HUNDRED SIXTY THOUSAND DOLLARS (\$360,000.00).

4.06 Forthwith upon execution and delivery of this Contract by the Municipality to the Owner, the Owner shall deposit with the Municipality an open irrevocable letter of credit in the amount of \$36,000.00 by way of security towards payment of those costs set out in Article 4.05.

4.07 Provided the Owner does not make the said deposit with the Municipality pursuant to Article 4.06 within Fourteen (14) days after the said land use contract has been executed by the proper officers of the Municipality and delivered to the Owner, this land use contract shall lapse, become void and be of no effect whatsoever.

4.08 Forthwith upon delivery of the final sealed working drawings for the design and installation of the said Gorge Sewer Trunk the Owner shall deposit with the Municipality an open irrevocable letter of credit in the amount of THREE HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$324,000.00) by way of security towards the payment of the balance of the costs set out in Article 4.05 and the Municipality upon receipt of the said letter of credit shall forthwith proceed to call tenders and let the contract for the installation of the said Gorge Sewer Trunk.

4.09 PROVIDED the Owner does not make the said deposit with the Municipality pursuant to Article 4.08 within FOURTEEN (14) days after the Municipality has called for the said deposit and the Owner shall not have commenced construction of the work of construction upon the said lands this contract shall lapse, become void and be of no effect whatsoever and the Municipality shall execute and deliver such releases as may be reasonably required to effectively discharge the said Land Use Contract and any monies paid by the Owner to the Municipality to the date of such discharge shall be absolutely forfeited.

5. SERVICES

5.01 The Municipality, at its own expense, shall provide, place and construct all off site fire hydrants, sewers, watermains, and all connections thereto up to the boundary of the land, and the sewers proposed for the said sewer easement pursuant to Article 4.01 hereof.

5.02 The Municipality shall provide the said services to the Owner from time to time upon written request of the Owner.

5.03 Subject to clause 5.04, the Municipality shall be solely liable for the operation and maintenance of the said services, but nothing herein contained shall be deemed to require the Municipality to operate and maintain the said services in any manner or to any extent different from its obligations arising from similar services provided out of its general municipal funds.

5.04 The Owner shall, at its own cost and expense, provide, place and construct the connections upon the land to the said services and shall provide at its sole expense any internal sewage lines solely intended to service the land, and lift stations.

6. PHASING OF PROJECT:

6.01 The work of construction of the improvements upon the parcels as outlined on the Drawings and Specifications may be undertaken in up to six (6) separate and distinct phases, and for these purposes the Municipality shall from time to time as requested sign and deliver any strata plan or plans incorporating such phases and from time to time as may be required by the Owner.

6.02 The Owner shall in its absolute and unfettered discretion determine the order and priority of construction of the phases.

6.03 From time to time the Owner shall deliver written notice of its determination of the order and priority of construction of the phases to the Municipality together with the drawings and specifications required for the issuance of a building permit.

6.04 Except as otherwise provided in this Agreement the lands, buildings and structures and the development thereof as specified herein shall comply with all statutes, regulations, by-laws, and ordinances from time to time in force in the District of Saanich and without limiting the generality of the foregoing, the development of all of the said 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 such buildings or structures.

6.05 The Owner shall apply for a building permit within TWO (2) YEARS of registration of this land use contract and commence construction not later than SIX (6) MONTHS after receipt of a building permit in respect thereof, and the Owner shall substantially complete construction of the first phase within a period of TWO (2) YEARS after commencement thereof.

6.06 The Municipality, upon the application by the Owner for a building permit pursuant to Article 6.03 hereof, may issue the building permit in accordance with Article 6.04 hereof, notwithstanding that the "Gorge Sewer Trunk" is not then completed, and the Owner shall be entitled at that time to connect to the existing sewage services to the land up to a total capacity of 76 dwelling units in all upon the said lands.

6.07 The Owner shall apply for a building permit for each successive phase within TWO (2) YEARS after the date of completion of the immediately preceding phase and the Owner shall substantially complete construction of that phase within a period of TWO (2) YEARS after commencement.

6.08 In the event that the Owner shall be delayed in the completion of any of its obligations hereunder, by reason of circumstances beyond the reasonable control of the Owner, the Council may upon the application of the Owner extend the period for the commencement and the completion of that phase and the following phases, if any, for a reasonable period of time to make appropriate allowance for the delay caused by such circumstances.

6.09 In default of completion of the construction of any phase within the time limits herein contained, the municipal council of the Municipality, at that time, may, after affording the Owner an opportunity to be heard, by resolution declare that this land use contract has ceased and determined.

6.10 Upon this land use contract lapsing ceasing and determining pursuant to Article 6.09 hereof, the Owner shall, within FOURTEEN (14) DAYS after request in the form of a resolution duly passed by the municipal council of the Municipality at its own expense, remove from the parcels all equipment and materials not incorporated into the improvements then on the parcels and upon written notice to the Owner in the form of a resolution duly passed by the Municipal Council of the Municipality, the Municipality

shall have the right to complete the construction of the improvements in whole or in part in accordance with the Drawings and Specifications with or without any plant, equipment or materials of the Owner then on the premises, and to charge to the Owner the reasonable cost to the Municipality of such completion, and such charges, if unpaid on the 31st day of December in any year, may be recovered by the Municipality, together with interest at six percent (6%) per annum and costs, in like manner as municipal taxes.

7. ZONING UPON DETERMINATION:

7.01 At the determination of the term hereof or upon this contract ceasing and determining<sup>ing</sup> and becoming of no force or effect pursuant to Article 6.09 hereof, the use of the land shall be governed by the provisions of this land use contract until a Zoning By-law applicable to the land is enacted.

7.02 If the use of the land pursuant to the terms of this contract is in conflict with the provisions of the said Zoning By-law then in force then such use shall be a lawful non-conforming use.

7.03 Upon the termination of this land use contract for whatsoever purpose the Owner shall not alter the use of the land as herein permitted in any manner without first obtaining the permission or authorization of the appropriate regulatory authorities.

8. GENERAL:

8.01 The Owner and the Municipality acknowledge and agree that the land use contract once executed by the Municipality shall not be registered at the Land Registry Office except upon the request of the Owner provided both Owner and the Municipality agree that this land use contract shall be null and void ab initio notwithstanding the execution thereof unless the said land use contract is registered in the Land Registry Office in the City of Victoria before the 10th day of January, 1977 and as a first charge against the land, having priority over any and all other restrictive covenants and any and all liens, entries, judgments, mortgages, agreements, leases or other encumbrances or charges of whatsoever kind or description, excluding Crown reservations, if any, and easements and rights of way; PROVIDED THAT if the Municipality shall not apply to register this land use contract as aforesaid, the Owner may and is hereby irrevocably authorized to apply to register the same as the agent of the Municipality, and the Municipality shall

For that purpose deliver to the Owner a fully executed copy of this land use contract duly attested and in all respects in registerable form together with a true copy of the by-law authorizing execution of the same by the Municipality, certified as such by the Municipal Clerk.

8.02 The Municipality may, before the 10th day of January, 1977 extend in writing such period, and may further extend in writing such period during any extension or extensions thereof.

8.03 The Municipality hereby irrevocably authorizes the Owner to apply in due course for registration of the Land Use Contract and the Municipality shall for that purpose deliver to the Owner a fully executed copy of the said Land Use Contract duly attested and in all respects in registerable form together with a true copy of the by-law authorizing execution of the same by the Municipality, certified as such by the Municipal Clerk.

8.04 The covenants on the part of the Owner and the Municipality herein contained shall be binding upon and run with the land and every part thereof, and shall enure to the benefit of and be enforceable by and against the Owner and the Municipality, and their respective successors and assigns.

8.05 If any of the land or any interest therein is lawfully expropriated before the 31st day of December, 1976, the Owner shall have the right on written notice to the Municipality to cancel this land use contract, and in that event this land use contract shall in law be deemed frustrated.

8.06 The Owner shall save harmless and indemnify the Municipality from and against:

- (a) All actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of, arising out of, or in any way connected with the construction of the said improvements.
- (b) All expenses and costs which may be incurred by reason of the construction of the said works resulting in damage to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged directly or indirectly in any way or to any degree to construct, repair or maintain.

8.07 It is understood and agreed that this contract constitutes the whole agreement between the Municipality and the Owner with

respect to the subject matter dealt with herein and that the Municipality and the Owner have made no representations, warranties, guarantees, or promises verbal or otherwise each to the other, other than those contained in this contract.

8.08 Time shall be of the essence of this land use contract.

8.09 The expression "Owner" wherever used in this contract shall mean the registered owners for the time being provided should the registered owners sell, transfer or assign the said lands to any person, firm or corporation after the registration of the land use contract the burden of any covenant herein made by the Owner shall and shall be deemed to have passed to such purchaser, transferee or assignee.


IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals and where a party is a corporate entity the corporate seal of such party has been affixed in the presence of its proper officers duly authorized so to do this 30th day of November, 1976.

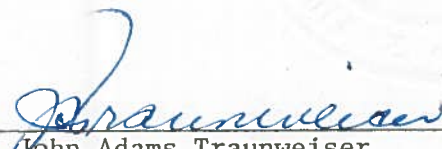
THE SEAL OF THE CORPORATION OF THE )  
DISTRICT OF SAANICH has been )  
affixed in the presence of its )  
duly authorized officers, namely, )

  
MAYOR

  
CLERK

SIGNED, SEALED AND DELIVERED by )  
JOHN ADAMS TRAUNWEISER in the )  
presence of: )

  
RICHARD N. SAMSON  
800 - 1070 DOUGLAS STREET  
VICTORIA, B.C.  
SOLICITOR

  
John Adams Traunweiser  
Director

THE CORPORATE SEAL OF TRAUNWEISER )  
MOTELS LTD. has been affixed )  
in the presence of: )

