

THIS LAND USE CONTRACT made in triplicate the 15th
day of May, A. D. 1973.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA,
a body constituted under the laws of the
Province of British Columbia
(hereinafter called "the Corporation")

OF THE ONE PART

- AND -

THE NORTH PARK MANOR SOCIETY,
a society duly incorporated as such under
the "Societies Act" of the Province of
British Columbia and having its registered
office at 1600 Quadra Street, in the City of
Victoria in the said Province
(hereinafter called "the Owner")

OF THE OTHER PART

WHEREAS it is provided by Subsection (2) of Section
702A of the "Municipal Act", R.S.B.C. 1960, cap. 255, as enacted
by S.B.C. 1971, cap. 38, 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 lands hereinafter described lie
within a C-2 Zone (Commercial Districts) as defined and
delineated by By-law Number 4382, being a By-law of the
Corporation cited as the "Zoning By-law, 1956", and the Municipal
Council of the Corporation has, by By-law Number 6441 cited as
the "Zoning By-law, 1956, Amendment By-law (No. 309), 1973",
amended the said By-law Number 4382 to designate an area of
land within the said zone as a Development Area;

AND WHEREAS the aforesaid lands are situate within
the area of land so designated;

AND WHEREAS it is provided by Subsection (3) of the
aforesaid Section 702A of the "Municipal Act", as amended by
S.B.C. 1972, cap. 36, that upon the application of an owner

DATE May 31 1973
NATURE OF INTEREST Land Use Contract
DECLARED VALUE Normal
DISPOSITION OF C.T.
PLEASE MERGE

APPLICANT W. Lee M. Smith
AS SOLICITORS/AGENTS FOR
T. P. O'GRADY
BARRISTERS & SOLICITORS
1 CENTENNIAL SQUARE
VICTORIA, B.C.
PHONE 386-2743

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of land within a Development Area, or his agent, a municipal council may by by-law, notwithstanding any by-law of the municipality or Section 712 or 713 of the "Municipal Act", 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 the use and development of the land shall, notwithstanding any by-law of the municipality, or the said Sections 712 and 713, be in accordance with the Land Use Contract;

AND WHEREAS the Society is the registered owner of the fee simple absolute in possession in and to the said lands and is registered as such in the Land Registry Office in the City of Victoria in the Province of British Columbia;

AND WHEREAS the Society has applied to the Municipal Council of the Corporation for this Land Use Contract;

AND WHEREAS it is provided by Subsection (4) of the said Section 702A of the "Municipal Act" 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 this Land Use Contract is to be registered in the aforesaid Land Registry Office as a first charge against the said lands;

AND WHEREAS it is provided by Subsection (6) of the said Section 702A of the "Municipal Act" that a municipal council shall not enter into a Land Use Contract until it has held a public hearing, notice of which shall have been published in the manner prescribed in Subsection (1) of Section 703 of the "Municipal Act" and except upon the affirmative vote of at least two-thirds of all members of the Council;

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AND WHEREAS the Municipal Council of the Corporation has held a public hearing with respect to the matter of this Land Use Contract, notice whereof was published in the manner prescribed in Subsection (1) of the aforesaid Section 703 of the "Municipal Act";

AND WHEREAS this Land Use Contract and the entering into of the same by the Corporation have been duly authorized by By-law Number 6479, cited as the "North Park Manor Land Use Contract Authorization By-law, 1973" which by-law was adopted by an affirmative vote of at least two-thirds of all the members of the Municipal Council of the Corporation:

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants hereinafter contained and set forth the parties hereto covenant and agree, each with the other as follows:

A. The Owner covenants and agrees with the Corporation that

(1) The lands described in Schedule "A" hereto (hereinafter called "the said lands") shall not for the period of fifty years next ensuing after the date of execution hereof be used except for the construction, reconstruction, erection and maintenance thereon of the building shown and described on the annexed drawings (hereinafter called "the said drawings") and for the use and enjoyment of the said building for the several purposes shown on or indicated by the said drawings which drawings are entitled "North Park Manor" numbered P-1 to P-5, both inclusive, P-5A, P-6 to P-11, both inclusive, 11-A, 11-B, 11-C and 11-D, and initialed for identification by the Clerk of the Corporation and without restricting the generality

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of the foregoing, the said building shall not be constructed, reconstructed, erected or maintained except in the position and in the manner shown on or indicated by the said drawings PROVIDED that if during the course of construction or erection of the said building it shall be made to appear to the Municipal Council for the time being of the Corporation that it is expedient or desirable in the interests of both the public and the Owner that minor departures from the said Drawings having no substantial effect upon the essential nature or character of the said building 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 a duly authorized authority, the said Municipal Council may in its absolute discretion permit such departures and PROVIDED further that the Owner shall be at liberty without any further or other consent or approval to effect such changes in the design of the roof of the sanctuary of the church comprised in the said building as may be desirable or expedient for the purpose of improving the acoustics of the said church.

(2) Notwithstanding Clause (1) of this paragraph, no portion or portions of the said building or of the lands surrounding the same shall be used or suffered or permitted to be used except for the purpose or purposes indicated in respect of such portion or portions on the said drawings PROVIDED that notwithstanding any word or words used on

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the said drawings to describe any such purpose or purposes, neither the said building nor any portion or portions thereof or of the said lands surrounding the same shall be used or permitted or suffered to be used except as and for

(a) a church for the public worship of God including church office, pastor's study and other facilities customarily incidental or ancillary to such use,

(b) a church hall including classrooms for religious instruction and other facilities customarily incidental or ancillary to such use,

(c) dwelling accommodation for elderly persons including a caretakers suite and not more than three (3) invalid suites, and

(d) the provision of space for the parking of automobiles in connection with the foregoing uses.

(3) Save only for lounges, hallways, lobbies, stairways, elevators, storage rooms and similar facilities and amenities to be used and enjoyed in common by the persons resident in the said building, the dwelling accommodation shown on the said drawings shall be comprised entirely of self-contained dwelling units as defined by the aforesaid "Zoning By-law, 1956" which said dwelling units shall not exceed one hundred fifty-seven (157) in number nor in any instance have a floor area of less than three hundred seventeen (317) square feet reckoned inclusively of the balcony thereof in each case.

(4) There shall be provided and maintained at all times on the said lands no fewer parking units than the number shown on the said drawings but so that in

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any event the total number of parking units to be provided and maintained within or immediately adjacent to the said building shall not be fewer than fifty-five (55) all of which shall be provided and maintained substantially in the manner and at the places shown on the said drawings and for the purposes of this clause the term "parking unit" shall bear the same meaning as it bears in the aforesaid "Zoning By-law, 1956".

(5) (a) Subject to strikes, lockouts, riots, insurrection and acts of God and the Queen's enemies, the work of construction of the said building shall be commenced within the period of three (3) years next ensuing after the date of execution of this Land Use Contract and shall be substantially completed within the period of five (5) years from the same date as evidenced in each case by the Certificate in writing of the City Engineer for the time being of the Corporation PROVIDED that the City Engineer shall not issue his Certificate as to the commencement of the said work unless and until he shall have been satisfied by such evidence as he in his absolute discretion shall deem sufficient that there has been expended upon labour and materials performed on or delivered to the said lands in the course of carrying out the said work, a sum equal to not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in lawful money of Canada, exclusive of architects and engineers fees

(b) upon default in the commencement of the said work in the manner and within the aforesaid period of three (3) years, this Land Use Contract shall thereupon lapse and be of no further force or effect;

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either in law or equity, and the Owner shall at its own entire cost and expense forthwith remove any and all works, plant, equipment and materials theretofore constructed or brought upon the said lands by the Owner, its servants or agents and shall restore the said lands as nearly as may be to the condition in which the same were at the date of execution of this Land Use Contract

(c) upon default by the Owner in substantially completing all of the said work within the aforesaid period of five (5) years, this Land Use Contract shall thereupon lapse and be of no further force or effect, either in law or equity, in relation to any and all parts of the said work which have not theretofore been substantially completed and which in the opinion of the aforesaid City Engineer (whose decision shall be final) need not be completed in order that the then completed part or parts of the work shall provide a good and sufficient building and no work shall thereafter be undertaken or performed or carried out on the said lands unless the written consent of the Municipal Council for the time being of the Corporation shall have been first had and obtained but this Land Use Contract shall otherwise remain in full force and effect to the intent that the Owner, its successors and assigns shall be thereby bound in relation to any and all parts of the said building then substantially completed in the same manner and to the same extent as if there had been no such default as aforesaid.

(6) The said lands shall not hereafter be subdivided without the consent in writing of the Corporation

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being first had and obtained but this clause shall not be construed so as to require the consent of the Corporation to the registration pursuant to the "Strata Titles Act", S.B.C., 1966, cap. 46, of a Strata Plan affecting the said lands.

(7) The covenants on the part of the Owner in these presents contained and set forth shall be binding upon and run with the said lands and every part thereof and shall enure to the benefit of and be enforceable by the Corporation, its successors and assigns.

B. The Corporation covenants and agrees with the Owner that notwithstanding anything to the contrary contained in the aforesaid "Zoning By-law, 1956" 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 Land Use Contract and to any other applicable by-law or by-laws of the Corporation for the time being in force and to any and all statutes, regulations, rules and orders affecting the said lands or the use thereof or the construction, reconstruction or maintenance of the aforesaid building or the use thereof, the Owner may lawfully undertake and carry to completion the work of constructing the said building on the said lands and may thereafter use the said building and the said lands in the manner and for the purposes set forth in the preceding Paragraph A hereof.

C. The Corporation and the Owner covenant and agree, each with the other, that

(1) This Land Use Contract shall lapse and be of no further force or effect, upon the expiration of the period of thirty (30) days next ensuing after

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the date of execution thereof unless within such period the same has been registered in the office of the Registrar of Titles at the City of Victoria as a first charge against the said lands 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 PROVIDED that if the Corporation shall not within the period of fifteen (15) days next ensuing after the date of execution hereof 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 Corporation and the Corporation 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 Corporation certified as such by the City Clerk.

(2) Time shall be of the essence of this Land Use Contract.

(3) All covenants and agreements herein and the rights hereby granted to either of the parties hereto shall extend to and be binding upon their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and in the year first above written.

The Corporate Seal of THE
CORPORATION OF THE CITY OF
VICTORIA was hereunto affixed
in the presence of:


CITY CLERK


MAYOR

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SEALED with the Seal of THE)
NORTH PARK MANOR SOCIETY)
in the presence of:)

[Signature])
CHAIRMAN.)
E. A. Hobbs)
Treasurer)

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SCHEDULE "A"

Lot "A", of Suburban Lot Three (3),

Victoria City,

Plan Twenty-Six Thousand Three Hundred Two (26302)

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CERTIFIED A TRUE COPY.

M. Wall
CITY CLERK, VICTORIA, B. C.

NO. 6479

A B Y - L A W

To authorize a Land Use Contract
between The Corporation of the
City of Victoria and The North
Park Manor Society

The Municipal Council of The Corporation of
the City of Victoria enacts as follows:

1. That subject to Section 2 of this By-law, the Corporation do enter into a Land Use Contract with The North Park Manor Society in the form of contract hereunto annexed as Schedule "A".

2. That the said Land Use Contract be executed under the Seal of the Corporation which shall be affixed thereto by the Mayor and the City Clerk PROVIDED however that the said Land Use Contract shall not be delivered to the said The North Park Manor Society unless and until

(a) the said The North Park Manor Society shall, within the period of forty-five (45) days next ensuing after the date of final adoption of this By-law or such further period of time as the Council may by resolution prescribe in that behalf, have been registered in the Office of the Registrar of Titles at the City of Victoria as the owner of the fee simple absolute in possession in and to the lands described in the Schedule to the said Land Use Contract, and

(b) the said The North Park Manor Society, having become so registered as owner of the said lands, shall, within the further period of fifteen (15) days thereafter, have made application in writing to the Corporation for the said Land Use Contract and itself have executed the same.

3. This By-law may be cited as the "North Park Manor Land Use Contract Authorization By-law, 1973".

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Passed by an affirmative vote of at least two-thirds
of all the members of the Municipal Council the
22nd day of *March*, A.D., 1973.

Reconsidered, adopted and finally passed by an
affirmative vote of at least two-thirds of all the
members of the Council the *12th* day of *April*,
A.D., 1973.

J. M. Sullivan
CITY CLERK
"S"

(*201*)

J. P. L. Lellan
MAYOR

Form No. 35

Victoria Book & Stationery Co. Ltd., Victoria, B.C.

Land Registry Act

FORM Q. (Section 59).

For the Secretary (or other Officer) of a Corporation

I HEREBY CERTIFY that, on the 4th day of May, 1973

at Victoria, in the Province of British Columbia

Chairman [whose identity has

has been proved by the evidence on oath of ROBERT L. JEFF

who is personally known to me, appeared before me and acknowledged to me that he is the CHAIRMAN

of THE NORTH PARK MANOR SOCIETY, and that he is the person

who subscribed his name to the annexed instrument as CHAIRMAN of the said SOCIETY

and affixed the seal of the SAID SOCIETY

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 hereto set my hand and Seal of Office at

Victoria B.C., this 28th day of

May, in the year of our Lord one thousand nine hundred

and seventy three

A Notary Public in and for the Province of British Columbia
A Commissioner for taking affidavits for British Columbia

NOTE: Where the person making the acknowledgment is personally known to the officer taking the same, strike out the words in brackets.

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Form No. 35.

Victoria Book & Stationery Co. Ltd.

Land Registry Act

FORM Q. (Section 59).

For the Secretary (or other Officer) of a Corporation

I HEREBY CERTIFY that, on the 15th day of May, 19 73
at Victoria, in the Province of British Columbia
Frederick Morran Waller [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 is the City
Clerk of The Corporation of the City of Victoria, and that he is the person
who subscribed his name to the annexed instrument as City Clerk of the said Corporation
and affixed the seal of the said Corporation
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 hereto set my hand and Seal of Office at
Victoria, this 15th day of
May, in the year of our Lord one thousand nine hundred
and seventy-three

[Signature]
A Notary Public in and for the Province of British Columbia.
A Commissioner for taking affidavits for British Columbia.

NOTE.—Where the person making this acknowledgment is personally known to the officer taking the same, strike out the words in brackets.

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