

CITY OF SURREY

BY-LAW NO. 12846

A by-law to amend the provisions of  
"Surrey Land Use Contract No. 365,  
Authorization By-law, 1977, No. 5263"

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NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. "Surrey Land Use Contract No. 365, Authorization By-law, 1977, No. 5263" is hereby amended as follows:

(a) The City of Surrey is hereby authorized and empowered to enter into an amending Land Use Contract with , for the development and use of certain Lands and premises located within the City of Surrey, in the Province of British Columbia, and more particularly known as described as:

Lot 110, Section 29, Block 5 North, Range 1 West, New Westminster District, Plan 55027

(10181 - 152 Street)

which said development shall be carried out and completed in accordance with the terms of the contract, a copy of which is attached to and forms a part of this By-law, and is marked Schedule "One (1)" to this By-law, and which contract becomes an addition to the Land Use Contract which forms Schedule One (1) of By-law 5263.

(b) The said amending Land Use Contract between the City of Surrey and shall have the force and effect of a Restrictive Covenant running with the hereinbefore described Lands and shall be registered in the Land Title Office by the City of Surrey.

(c) The Mayor and Clerk are hereby authorized and empowered to sign and affix the Corporate Seal to the amending Land Use Contract and to do all acts necessary and incidental to the completion of the said amending Land Use Contract No. 365.

2. This By-law shall be cited for all purposes as "Surrey Land Use Contract No. 365, Authorization By-law, 1977, No. 5263, Amendment By-law, 1996, No. 12846."

PASSED FIRST AND SECOND READING on the 10th day of June, 1996.

PUBLIC HEARING HELD thereon on the 15th day of July, 1996.

PASSED THIRD READING on the 22nd day of July, 1996.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 27th day of January, 1997.

\_\_\_\_\_MAYOR

\_\_\_\_\_CLERK

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SCHEDULE ONE OF BY-LAW NO. 12846

CITY OF SURREY

MODIFICATION OF LAND USE CONTRACT NO. 365

THIS AGREEMENT made the        day of                    199

BETWEEN:

CITY OF SURREY, a Municipal Corporation  
under the "Municipal Act" of the Province of British Columbia,  
and having its City Offices at 14245 - 56th Avenue,  
in the City of Surrey, in the Province of British Columbia.

(hereinafter called the "City")

OF THE FIRST PART:

AND:

LAING PROPERTY CORPORATION  
560 Granville Square  
200 Granville Street  
Vancouver, B.C.  
V6C 1S4

(hereinafter called the "Developer")

OF THE SECOND PART:

WHEREAS the Developer is the registered owner of an estate in fee simple of all and singular those certain parcels or tracts of Land and premises situated, lying and being in the City of Surrey, in the Province of British Columbia, being more particularly known and described as:

Parcel Identifier No.: 005-331-714

Lot 110, Section 29, Block 5 North, Range 1 West,

New Westminster District, Plan 55027;

(10181 - 152 Street)

(hereinafter called "the Land")

AND WHEREAS the City and Guildford Development Corporation Limited entered into a Land Use Contract, designated "Land Use Contract No. 365" respecting the Land, which Land Use Contract was adopted by the City Council of the City of Surrey on the 12th day of September 1977, and registered in the Land Title Office, in the City of New Westminster, in the Province of British Columbia, under Number N130582.

AND WHEREAS the City and Guildford Development Corporation Limited subsequently entered into a development agreement, designated "Development Agreement No. 365-3" respecting the Land, which Development Agreement was executed on the 27th day of November, 1978;

AND WHEREAS the City and the Developer agree that certain of the requirements, conditions, covenants and agreements set out and expressed in the said Land Use Contract are not properly applicable to the desired development of the Land;

AND WHEREAS the Developer has proposed that the said Land Use Contract filed under Number N130582 be amended as hereinafter provided and has made application to the City to initiate such change;

AND WHEREAS the Council of the City having given due regard to the considerations set forth in Sections 956 to 959 and Section 982 of the "Municipal Act," and of the "Surrey Land Use Contract Procedure By-law, 1973, No. 4053," and the Surrey Official Community Plan, has agreed to the terms, conditions and considerations 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 Contract must first be obtained before the City 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 it is fully aware of the provisions and limitations of Section 982 of the "Municipal Act" and of the "Surrey Land Use Contract Procedure By-law, 1973, No. 4053" and the City and the Developer mutually acknowledge and agree that the Council of the City cannot enter into this Agreement for the Modification of Land Use Contract No. 365, 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 a majority of all the members of the Council present at the meeting at which the said amendment is considered, vote in favour of the By-law authorizing the City to enter into this Agreement for the Modification of Land Use Contract No. 365;

NOW THEREFORE THIS CONTRACT WITNESSETH that in consideration of the premises and the conditions and covenants hereinafter set forth, the City and the Developer covenant and agree as follows:

1. The City and the Developer acknowledge and agree that the terms and provisions set forth in the Land Use Contract designated as "Land Use Contract No. 365", filed under Number N130582 and Development Agreement No. 365-3 made pursuant thereto shall apply, mutatis mutandis, to this Agreement and to the Land and shall continue to apply thereto save and except as hereinafter provided in Clause 2.

2. (a) Notwithstanding any provision contained in Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, the Land and any and all buildings, structures and improvements constructed or erected upon the Land shall be as set forth in Schedules "B", "C", "D", "E", "F", "G" and "H" which are attached hereto and form part of this Agreement and for no other use or purpose and the said Land Use Contract and Development Agreement are amended accordingly.

(b) PERMITTED LAND USE:

Notwithstanding any provision contained in Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, the Land and any and all buildings, structures and improvements constructed or erected upon the Land shall be used only for the purpose set forth in Schedule "B" attached to and forming part of this Agreement and for no other use or purpose and the said Land Use Contract and Development Agreement are amended accordingly.

(c) SITING AND DESIGN:

Notwithstanding any provision contained in Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, building design, siting and landscaping on the Land shall be as set forth in Schedule "C" and developed as shown on Drawings Numbered 7995-0136-00 (A) to (E) which are attached hereto and form part of the said Land Use Contract.

Minor changes to the aforesaid drawings that do not affect the intent of this Land Use Contract and the general appearance of the buildings and character of the development may be permitted, subject to the written approval of the City.

(d) LANDSCAPING:

Notwithstanding any provision contained in Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, the following standards for landscaping are required:

(i) All landscaping works and planting materials shall be provided in accordance with Schedule "G" and the landscaping plan and specifications which are attached hereto and form part of the said Land Use Contract and are

attached hereto as Drawings Numbered 7995-0136-00(E).

(ii) All planting materials provided shall be able to survive for a period of one (1) year from the date of the site approval (the "Original Inspection") by the City.

(e) LANDSCAPING SECURITY:

Notwithstanding any provision contained in Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, the following apply:

(i) The developer covenants and agrees to contribute forthwith to the City, the Security set out below to ensure satisfactory provision of landscaping works and planting materials in accordance with the terms and conditions as set forth in Section 2, Sub-Section (d) of this Agreement. There is filed accordingly:

- An irrevocable Letter of Credit in the amount of \$3,575.00 (the "Security").

(ii) Should any interest be earned upon the Security, it shall accrue to the Developer and be paid to the Developer if the Security is returned. A condition of the posting of the Security is that should the Developer fail to carry out the landscaping and planting materials works as hereinabove stated, according to the terms and conditions of this Agreement within the time provided, the City may use the Security to complete these works or services by its servants, agents or contractors, and any surplus shall be paid over to the Developer.

(iii) The Developer shall complete the landscaping works required by this Agreement within six (6) months of the occupancy permit being issued for the buildings. Within this six (6) month period, the required landscaping must be installed by the Developer and inspected and approved by the City.

If the landscaping is not approved within this six (6) month period, the City has the option of continuing to renew the Security until the required landscaping is completed or has the option of drawing the Security and using the funds to complete the required landscaping. In such a case the City or its agents have the irrevocable right to enter into the property to undertake the required landscaping for which the Security was submitted.

If the landscaping is approved within the six (6) months or thereafter in accordance with the preceding paragraph, without the City having to draw the Security, 90% of the Security will be returned to the Developer. A holdback of 10% of the Security will be retained until a final inspection is undertaken within 14 months of the date of the "Original Inspection" approval given to the landscaping referred to in Section 2, Sub-Section (d) (ii). If the landscaping receives approval at final inspection, the 10% holdback will be returned to the Developer. If, after the final inspection, approval of the landscaping is not given, the City has the option of continuing to renew the Security until the required landscaping is approved or has the option of drawing upon the Security and using the funds to complete the required landscaping. In such a case, the City or its agents have the irrevocable right to enter onto the Land to undertake the required landscaping for which the Security was submitted.

(f) OFF-STREET PARKING

Notwithstanding any provision contained in Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, "Off Street Parking", shall be as follows:

Indoor/Outdoor Restaurant      55 spaces

Drive-in Restaurant              24 spaces

TOTAL 79 spaces

As set forth in Schedule "C" and shown on Drawing Numbered 7995-0139-00(A) which are attached hereto and form part of this Agreement.

**All applicable provisions and Schedules of Land Use Contract No. 365 and Development Agreement No. 365-3 are amended as aforesaid.**

3. Upon the execution of this Agreement by the parties hereto and registration thereof at the Land title Office, in the City of New Westminster, Land Use Contract No. 365 and Development Agreement No. 365-3 made pursuant thereto, shall stand amended as herein provided.

4. The Developer has obtained the consent of all persons holding an registered interest in the Land as set out in the consents to the use and development of the Land as set forth herein, which consents are attached hereto in Schedule "1(a)" forming Part of this Agreement.

5. It is understood and agreed that the City has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer, other than those in this Agreement and in Land Use Contract designated as Land Use Contract No. 365.

6. This Agreement shall have the force and effect of a Restrictive Covenant running with the Land and shall be registered in the Land title Office by the City pursuant to the provisions of Section 982(7) of the "Municipal Act" and in accordance with the "Land Title Act."

7. 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 required.

8. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

9. Subject to this Agreement, the within works and the development herein shall comply with all of the by-laws of the City of Surrey.

IN WITNESS THEREOF the said parties to this Contract have hereunto set their hands and seal the day and year first above written.

OFFICER SIGNATURE(S) EXECUTION DATE TRANSFEROR/BORROWER/

PARTY SIGNATURE(S)

Y M D

CHARLIE J. COLTART FORLAING  
PROPERTY CORPORATION

ALEC D. CARUTH FORLAING PROPERTY  
CORPORATION

CITY OF SURREY BYITS AUTHORIZED  
SIGNATORIES;

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MAYOR - DOUG W. MC CALLUM

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CITY CLERK - DONNA B. KENNY

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Schedule "1(a)"

CONSENT

RE MODIFICATION OF LAND USE CONTRACT NO. 365

Laing Property Corporation, a company incorporated under the Company Act of

560 Granville Square, 200 Granville Street, Vancouver, B.C. V6C 1S4, being the registered owner in fee simple of Lot 110, Section 29, Block 5 North, Range 1 West, New Westminster District, Plan 55027, registered in the Land Title Office at New Westminster, British Columbia, under Certificates of Indefeasible Title numbered Z164386E in consideration of the sum of \$1.00, the receipt and sufficiency of which is hereby acknowledged, hereby agrees, acknowledges and consents to:

1. the registration of the Modification of Land Use Contract between the City of Surrey and Laing Property

Corporation which Modification of Land Use Contract is attached as Schedule One of City of Surrey By-law No. [12846](#), being a by-law to amend the provisions of "Surrey Land Use Contract No. 365 Authorization By-law, 1977, No. 5263" a copy of which has been given to and reviewed by us; and

2. the Modification of Land Use Contract having the force and effect of a restrictive covenant running with the Lands and against the aforementioned Land.

Officer's Signature      Execution Date      Party(ies) Signature(s)

Y   M   D

Laing Property Corporation

by its authorized signatory(ies)

(As to both signatures)

Name: Charlie J. Coltart

Name: Alec D. Caruth

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1979 c.116 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

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**THE CITY OF SURREY  
LAND USE CONTRACT NO. 365  
DEVELOPMENT AGREEMENT NUMBER 3  
AMENDED SCHEDULES**

**SCHEDULE "A"**

Legal Description of the Land Herein:



Lot 110 of Section 29 Block 5 North Range 1

West Plan 55027 New Westminster District

**SCHEDULE "B"**

**Schedule of Permitted Land Use:**

The Land shall be used for a restaurant with outdoor patio area encompassing a total of 192 seats, together with a 24 car capacity drive-in restaurant

**SCHEDULE "C"**

**Siting and Design:**

Gross Site Area: 4350.2 sq. m [46,827 square feet]

.43 Hectare [1.08 Acre]

Front Yard: 6.1 metres

Rear Yard: 52.4 metres (approximately)

Side Yard - South: 16.45 metres

Side Yard - North: 3.65 metres

Building Area: 562.1 square metres [6,051 square feet]

Outdoor Patio Area 47.3 square metres [509 sq. ft.]

Lot Coverage 0.14 of site area

**Parking:**

Indoor/Outdoor Restaurant 48 spaces

Drive-In 24 spaces

Handicapped 2 spaces

Employee 5 spaces

79 spaces

All as shown on Drawing Number 7995-0136-00 (A) to (D), attached to and forming part of this Development Agreement Amendment.

**THE CITY OF SURREY**

**LAND USE CONTRACT NO. 365**  
**DEVELOPMENT AGREEMENT NUMBER 3**  
**AMENDED SCHEDULES**

**SCHEDULE "D"**

**Height of Buildings and Structures:**

Maximum height of building = Seven decimal point three one (7.31) metres [Twenty-four (24) feet].

**Floor Area:**

562.1 square metres [6,051 square feet] and an enclosed outdoor patio of 47.3 square metres [509 square feet]

Number of Seats = 192

All as shown on Drawings Numbered 7995-0136-00 (B) to (D), attached to and forming part of this Development Agreement Amendment.

**SCHEDULE "E"**

**Off Street Parking:**

Parking for Restaurant:

Indoor/Outdoor Restaurant: 48 spaces

Drive-In Restaurant: 24 spaces

Handicapped: 2 spaces

Employees: 5 spaces

TOTAL 79 spaces

Minimum size of each stall: 8 feet, 2 inches x 18 feet

Surface treatment of all driveways, parking areas and walkways - concrete or asphaltic pavement.

All as shown on Drawings Numbered 7995-0136-00(A), attached to and forming part of this Development Agreement Amendment.

**THE CITY OF SURREY  
LAND USE CONTRACT NO. 365  
DEVELOPMENT AGREEMENT NUMBER 3  
AMENDED SCHEDULES**

**SCHEDULE "F"**

**Signs:**

All signs to the site and building shall be to the satisfaction and approval of the Municipal Planner and further that the sign to the 152nd Street frontage, shall be an "eye level" sign mounted on a stone cairn.

**SCHEDULE "G"**

**Landscaping, Surface Treatment, Fences and Screen:**

All as shown on Drawing Number 7995-0136-00 (E), attached to and forming part of this Development Agreement Amendment.

Surface treatment of driveways, parking areas, walkways - concrete or asphaltic pavement.

**SCHEDULE "H"**

**Subdivision Plans:**

Parcels to be created: Deleted

Area, Shape and Dimensions: The Land shall be held in One (1) parcel and shall not be further subdivided.

