

CITY OF SURREY

BY LAW NO. 15507

A by law to enter into a development works agreement to authorize the acquisition of appliances, equipment, materials, real property, easements and rights of way required to construct works as identified in the development works agreement to service properties within a portion of the North Cloverdale West NCP; to define the benefiting real property and to establish that the cost of the works shall be borne by the owners of real property within such defined area.

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- A. WHEREAS Council may by by law pursuant to Section 937.1 of the *Local Government Act*, R.S.B.C. 1996, c. 323, as amended (the "*Local Government Act*") enter into a development works agreement to provide, construct, alter, or expand works by the City or by the developer and the cost of constructing the works shall be recovered in part or in whole from the owners of real property in the area subject to the agreement;
- B. AND WHEREAS Council has been petitioned to construct works to serve a portion of the North Cloverdale West NCP pursuant to Section 937.1(4)(c) of the *Local Government Act*;
- C. AND WHEREAS the City Clerk has certified that the petition is sufficient;
- D. AND WHEREAS it is deemed expedient to grant the prayers of the petitioners in the manner hereinafter provided and proceed with the construction of the works.

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

- 1. This By law shall be cited for all purposes as "Development Works Agreement – North Cloverdale West NCP By law, 2004, No. 15507".
- 2. The City Council is hereby authorized to enter into that certain development works agreement attached as Schedule "1" to this By law (the "Development Works Agreement").
- 3. The Mayor and the City Clerk are authorized on behalf of the Council to sign and seal the Development Works Agreement.
- 4. Schedule "1" forms a part of this By law.
- 5. The Specified Charge, as defined in the Development Works Agreement, payable by the Owners shall increase each year by 5% as specified on Schedule "C" of the Development Works Agreement.

PASSED THREE READINGS on the 1st day of November, 2004.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 15th day of November, 2004.

_____MAYOR

_____CLERK

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Schedule "1"

DEVELOPMENT WORKS AGREEMENT

THIS AGREEMENT dated for reference the _____ day of _____, 2004.

BETWEEN:

CITY OF SURREY, a municipal corporation under the *Local Government Act* of the Province of British Columbia and having its offices at 14245 56th Avenue, City of Surrey, Province of British Columbia, V3X 3A2

(the "City")

OF THE FIRST PART

AND:

PARK LANE VENTURES (PROVINCETON) LTD., a body corporate under the laws of the Province of British Columbia and having its offices at Four Bentall Centre, Suite 2000, 1055 Dunsmuir Street, City of Vancouver, Province of British Columbia, V7X 1L5

(the "Developer")

OF THE SECOND PART

- A. **WHEREAS** the real property within the North Cloverdale West Neighbourhood Concept Plan is identified in column two entitled "Legal Description" in Schedule "A", attached hereto (the "Benefiting Area");
- B. **AND WHEREAS** the registered owners in fee simple of the Benefiting Area are identified in column one entitled "Registered Owner" in Schedule "A", attached hereto (the "Owners");
- C. **AND WHEREAS** the works as described in Schedule "B", attached hereto (the "Works") is required to be constructed;
- D. **AND WHEREAS** the Developer shall undertake the performance of its obligations required to be made pursuant to this Agreement;

- E. **AND WHEREAS** the Works is not currently scheduled for construction by the City;
- F. **AND WHEREAS** the Developer has requested that the City advance the acquisition and construction of the Works and has agreed to facilitate such acquisition and construction for the development of the Benefiting Area;
- G. **AND WHEREAS** Section 937.1 of the *Local Government Act*, R.S.B.C. 1996, c. 323 and amendments thereto (the "*Act*") authorizes Council to enter into an agreement with a Developer for the provision of the Works by the Developer; and
- H. **AND WHEREAS** Council adopted Development Works Agreement – North Cloverdale West NCP By-law, 2004, No. 15507 on November 15, 2004, authorizing the parties to enter into this Agreement pursuant to Section 937.1 of the *Act*, providing for the provision of the Works by the Developer.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of ONE (\$1.00) DOLLAR of lawful money of Canada and other good and valuable consideration now paid by each of the parties hereto, to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

1. **DEFINITIONS**

In this Agreement and in the recital above:

"*Act*" means the *Local Government Act*, R.S.B.C. 1996, c. 323, as revised, re-enacted or consolidated from time to time and any successor statute.

"Agreement" means this Agreement and all Schedules attached hereto.

"Benefiting Area" means the real property described in column two entitled "Legal Description" in Schedule "A."

"Capital Cost - Actual" means costs incurred by the Developer to construct the Works as determined in Section 3(e) of this Agreement, provided that this is not greater than the Capital Cost - Estimated.

"Capital Cost - Estimated" means costs proposed to be incurred by the Developer to construct the Works which costs are estimated in Section 2(b) of this Agreement.

"City" means the City of Surrey, 14245 - 56 Avenue, Surrey, British Columbia V3X 3A2, Attention: Legal Services Division.

"Commencement Date" means the date of final adoption of Development Works Agreement – North Cloverdale West NCP By-law, 2004, No. 15507.

"Council" means the elected Council of the City.

"Developer" means Park Lane Ventures (Provincetown) Ltd., Four Bentall Centre, Suite 2000, 1055 Dunsmuir Street, Vancouver, British Columbia, V7X 1L5.

"Development Cost Charge" means a charge imposed pursuant to the Development Cost Charge By-law.

"Development Cost Charge By-law" means Surrey Development Cost Charge By-law, 2002, No. 14650,

enacted by the City under the *Act* as such By law is amended or replaced from time to time.

"General Manager" means the General Manager, Engineering for the City.

"Owners" means each of the registered owners in fee simple of the Benefiting Area as identified in column one entitled "Registered Owner" in Schedule "A" attached hereto.

"Works" means a road and related appurtenances as described in Schedule "B."

"Specified Charge" means a debt payable to the City in the maximum amount of \$2,467.04 for each new dwelling unit to be created by subdivision as approved by the City, in accordance with the by laws of the City, including, but not limited to, the Development Cost Charge By law and Subdivision and Development By law.

"Subdivision and Development By law" means Surrey Subdivision and Development By law, 1986, No. 8830, enacted by the City under the *Act* as such By law is amended or replaced from time to time.

"Term" means the period of time from and including the Commencement Date to and including ten (10) years less one day.

2. **WORKS**

- (a) The Developer shall be solely responsible for the design, engineering and construction of the Works and for retaining consultants and entering into any contracts required to construct the Works, subject to the direction of the City. Following execution of this Agreement by the parties, the Developer agrees to take all necessary steps to proceed with the construction of the Works.
- (b) The parties acknowledge that, as of the date of this Agreement, the estimated Capital Cost – Estimated is One Million Three Hundred Ten Thousand (\$1,310,000.00) Dollars in lawful currency of Canada.
- (c) The Developer agrees to facilitate the design, engineering and construction of the Works through the provision of funds as set out in this Agreement.
- (d) The Developer agrees to complete the construction of the Works within one year after the Commencement Date.

3. **PAYMENT FOR WORKS**

- (a) Each of the Owners shall pay the Specified Charge to the City for each new dwelling unit within each lot to be created by subdivision as approved by the Approving Officer, in accordance with the by laws of the City, including, but not limited to, the Development Cost Charge By law and Subdivision and Development By law.
- (b) For greater certainty, a deduction will not be made for the number of parent lots out of which the new lots have been approved for subdivision.
- (c) The Specified Charge shall be payable to the City on or before the date when the Development Cost Charge pursuant to the Development Cost Charge By law and the Subdivision and Development By law are payable to the City.
- (d) Until the Specified Charge is paid, Council, an Approving Officer, a building inspector or other municipal authority is not obligated to:

- (i) approve a subdivision plan, strata plan, building permit, development permit, development variance permit or zoning by law necessary for the development of real property of the Owners within the Benefiting Area; or
 - (ii) do any other thing necessary for the development of real property of the Owners in the Benefiting Area.
- (e) After the completion of the construction of the Works, the General Manager shall determine the Capital Cost - Actual of the construction of the Works. Should the Capital Cost - Actual of the construction of the Works be less than the Capital Cost - Estimated, the parties hereto agree to reduce the Specified Charge.
- (f) The City is not responsible for financing any of the costs of the Works.
- (g) In the event the Capital Cost - Estimated is reduced, then the balance payable pursuant to this Agreement to the Developer shall be reduced accordingly, as determined by the City.
- (h) The parties agree that an amendment to the By law adopting this Agreement is not required to reduce the Specified Charge payable by the Owners of the Benefiting Area or reduce the Capital Cost – Estimated to Capital Cost – Actual for the construction of the Works.
- (i) In consideration of the completion of the Works by the Developer, to the satisfaction of the General Manager, without incurring any cost to the City, the City agrees to collect from the Owners within the Benefiting Area who have not heretofore contributed to the cost of construction thereof, the Specified Charge. The Specified Charge shall be escalated at an interest rate of 5% per annum as set out in Schedule "C," attached hereto, and shall be conclusive against the Owners of the Benefiting Area.
- (j) The City shall pay to the Developer, within 60 days after each annual anniversary of the completion of the Works as determined in writing by the City, the sums collected from the Owners of the Benefiting Area at the address of the Developer as set forth hereinbefore or at such other address as the Developer shall provide by registered mail. If the said payments are returned to the City unclaimed by the Developer and if the City is unable to locate the Developer after all reasonable efforts, then the City shall hold all monies collected until the expiry of this Agreement. After the expiry of this Agreement, all such unclaimed funds shall be retained forever by the City.
- (k) In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the City Treasurer shall pay any benefits accruing hereunder, after notice, to such successor of the Developer as the City Treasurer, in his judgment deems entitled to such benefits; and in the event of conflicting demands being made upon the City for benefits accruing under this Agreement, then the City may at its option commence an action in interpleader joining any party claiming rights under this Agreement, or other parties which the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable legal fees and costs, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

4. **TERM**

- (a) If the Developer fails to complete the Works within twelve (12) months after the Commencement Date, this Agreement shall lapse; provided, however, that the Developer may request to extend the Term of this Agreement provided it obtains the consent of the City, such consent which may be arbitrarily withheld.
- (b) The Developer agrees that if insufficient funds are paid by the Owners of the Benefiting Area within the Term of this Agreement, that it is at its risk and at the expiry of the Term no further monies are payable to the Developer pursuant to this Agreement.
- (c) This Agreement shall terminate prior to the expiry of the Term in the event the Developer has been paid the Capital Cost – Actual and interest as specified herein.

5. INDEMNITY

- (a) The Developer agrees to indemnify the City, its employees, elected officials, contractors and agents against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the City and the Developer entering into this Agreement by reason of the following:
 - (i) a breach by the Developer of its obligations under this Agreement; or
 - (ii) any dispute arising with respect to the cost of services, the application of credits or payments required to be made pursuant to this Agreement.

6. CITY'S COSTS

The Developer shall pay to the City, by cash or bank draft, prior to the City executing this Agreement, a fee equivalent to \$4,000.00 for the preparation and administration of this Agreement.

7. NOTICES

- (a) Any notice, demand, acceptance or request required to be given hereunder in writing shall be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise) and addressed to the Developer as follows:

PARK LANE VENTURES (PROVINCETON) LTD.
Four Bentall Centre, Suite 2000, 1055 Dunsmuir Street
Vancouver, B.C. V7X 1L5

of such change of address as the Developer has, by written notification, forwarded to the City, and to the City as follows:

CITY OF SURREY
Engineering Department
14245 - 56th Avenue
Surrey, B.C. V3X 3A2

Attention: General Manager, Engineering

c.c. City Solicitor

or such change of address as the City has, by written notification, forwarded to the Developer.

- (b) Any notice shall be deemed to have been given to and received by the party to which it is addressed:
 - (i) if delivered, on the date of delivery; or
 - (ii) if mailed, then on the fifth (5th) day after the mailing thereof.

8. **BINDING ON SUCCESSORS**

- (a) It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties, their successors and assigns.
- (b) The Developer shall not assign or transfer its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

9. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof.

10. **LAWS OF BRITISH COLUMBIA**

This Agreement shall be interpreted under and is governed by the applicable laws of Canada and the Province of British Columbia.

11. **SCHEDULES**

The Schedules attached hereto, which form part of this Agreement, are as follows:

- (a) Schedule "A" - Owners and Benefiting Area
- (b) Schedule "B" - Works
- (c) Schedule "C" - Annual Interest Rate Increases for Specified Charge

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

CITY OF SURREY
by its authorized signatories

Mayor

City Clerk

PARK LANE VENTURES (PROVINCETON) LTD.

by its authorized signatories

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LN 11/22/04 3:26 PM**SCHEDULE "A"**

REGISTERED OWNER	LEGAL DESCRIPTION	CIVIC ADDRESS	ROLL NUMBER
Park Lane Ventures (Provinceton) Ltd 95 Schooner St Coquitlam BC V3K 7A8	006-487-467 Lot 1, Plan 30085, Part NW ¼, Section 17, Township 8, New Westminster Land District	6814 – 176 Street	8173- 0000-5
Gair Cameron S 7055 180 St Surrey BC V3S 8E7 Gair Christina M 7055 180 St Surrey BC V3S 8E7 Lon Godfrey Realty Ltd 927 Montcalm Dr Kelowna BC V1Y 3M8	007-900-201 Lot 1, Plan 74753, Part NW ¼, Section 17, Township 8, New Westminster Land District	7055 – 180 Street	8173- 00003-7
Park Lane	007-900-210 Lot 2, Plan	7025 – 180 Street	8173- 01003-1

Ventures (Provinceton) Ltd 95 Schooner St Coquitlam BC V3K 7A8	74753, Part NW ¼, Section 17, Township 8, New Westminster Land District		
Charlton Fred 6986 176 St Surrey BC V3S 8E7	024-957-976 Lot 2, Section 17, Township 8, New Westminster District, Plan LMP46179	6890 – 176 Street	8173- 01004-3
Park Lane Ventures (Provinceton) Ltd 95 Schooner St Coquitlam BC V3K 7A8	006-703-119 Lot 3, Plan 32059, Part NW ¼, Section 17, Township 8, New Westminster Land District	6973 – 180 Street	8173- 02010-3
Park Lane Ventures (Provinceton) Ltd 95 Schooner St Coquitlam BC V3K 7A8	006-703-135 Lot 4, Plan 32059, Part NW ¼, Section 17, Township 8, New Westminster Land District, Except Plan LMP35060	6945 – 180 Street	8173- 03011-X
Gong Ye 805-4888 Hazel St Burnaby BC V5H 4T4 Chen Li 805-4888 Hazel St Burnaby BC V5H 4T4 Huntley Canada Holdings Ltd	013-230-166 Parcel B, Plan Ref 2190A, Part NW ¼, Section 17, Township 8 New Westminster District	17936 Old Yale Road	8173- 91002-9

8508 206 St Langley BC V2Y 2B6			
Gryschuk John D 17925 Old Yale Rd Surrey BC V3S 8E7	013-230-247 Parcel “C” RP 4462 NW 1/4 Section 17 Township 8 except: Part NE of Trans Canada Highway shown on Plan 4500, Part of plan 17087, Part of Plan 4500, New Westminster District	17925 Old Yale Road	8173- 92004-7
Krebs Andreas P 208-1420 Parkway Blvd Coquitlam BC V3E 3J6 Krebs Georgia B 208-1420 Parkway Blvd Coquitlam BC V3E 3J6	013-230-034 Parcel D, Plan 3573, Part N ½ of NW ¼, Section 17, Township 8, New Westminster Land District	17912 Old Yale Road	8173- 93002-8
Dixon Paula M 17918 Old Yale Rd E Surrey BC V3S 8E7 Dixon Bradley C 17918 Old Yale Rd E Surrey BC V3S 8E7	013-229-991 Parcel H, Plan 13997, Part N ½ of NW ¼, Section 17, Township 8, New Westminster District, Portion of PCL D (RP3573)	17918 Old Yale Road	8173- 95202-4

Dixon Christopher H 17918 Old Yale Rd E Surrey BC V3S 8E7 Dixon Susan J 17918 Old Yale Rd E Surrey BC V3S 8E7			
Craig Arlene G 7075 180 St Stn A Surrey BC V3S 8E7	013-230-158 Parcel G, Plan 2191, Part N ½ of NW ¼, Section 17, Township 8, New Westminster Land District Except Plan Ref 2192	7075 - 180 Street	8173- 97102-X
Fkc (168) Produce Ltd 18341 Fraser Hwy Surrey BC V3S 8E7	012-194-701 Lot 12, Plan 1510, Part NE ¼, Section 17, Township 8, New Westminster Land District, Except Plan 10177	18014 Fraser Hwy.	8174- 11002-1
Park Lane Ventures (Provinceton) Ltd 95 Schooner St Coquitlam BC V3K 7A8	002-070-367 Lot 13, Plan 1510, Part NE 1/4 , Section 17, Township 8, New Westminster Land District, Except Plan 4500 & 17087	18084 Fraser Hwy.	8174- 12002-6
Park Lane Ventures (Provinceton) Ltd 95 Schooner St	009-824-774 Lot 14, Plan 1510, Part NE ¼, Section 17, Township 8, New	7046 – 180 Street	8174- 13002-0

Coquitlam BC V3K 7A8	Westminster Land District		
Godin John K 7086 180 St Surrey BC V3S 8E7 Godin Grace S 7086 180 St Surrey BC V3S 8E7	001-726-421 Plan 1510, New Westminster Land District, N 127' of PCL A (10177) Lot 12, NE Section 17, Township 8, Plan 1510 (OKA B)	7086 – 180 Street	8174- 90001-9
Sihota Charanjit S 4320 Dallyn Rd Richmond BC V6X 2S7 Sihota Jasbir K 4320 Dallyn Rd Richmond BC V6X 2S7	012-194-689 Parcel A, Lot 135.4, Block Plan 1510, Pa NE ¼, Section 17, Township 8, New Westminster Land District, Except Plan Ref 10177, OKA PCL. A	7070 – 180 Street	8174- 90001-9
Park Lane Ventures (Provinceton) Ltd 95 Schooner St Coquitlam BC V3K 7A8	024-184-322 Lot 6, Plan LMP38121, Section 17, Township 8, New Westminster Land District	7000 – 180 Street	8174- 05004-8

SCHEDULE "B"

- Widen 176 Street at 68A Avenue, including a left turn bay;
- Install traffic signal at 176 Street and 68A Avenue; and
- Construct 177 Street from 68A Avenue to 70 Avenue, including culvert crossings.

- Construct 70 Avenue from 177 Street to 178 Street.

SCHEDULE "C"

Payment Year	Multiplier Factor	Payment
2005	1.000	\$2,467.04
2006	1.050	\$2,590.39
2007	1.103	\$2,721.15
2008	1.158	\$2,856.83
2009	1.216	\$2,999.92
2010	1.276	\$3,147.94
2011	1.340	\$3,305.83
2012	1.407	\$3,471.13
2013	1.477	\$3,643.82
2014	1.551	\$3,826.38

After Year 2014, there will be no charge.