



PO Box 1749
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MEMORANDUM

TO: Chair and Members of North West Planning Advisory Committee

FROM: Melissa Eavis, Planner II

DATE: August 23, 2017

SUBJECT: Case 21213: Application for a non-substantive amendment to an existing development agreement for lands located at 285 Larry Uteck Blvd, Halifax to allow for an extension to the construction completion dates

Feedback is sought from North West Planning Advisory Committee relative to the proposed application. The committee's recommendation will be forwarded along with the staff report to North West Community Council.

Please find enclosed the following documents for your consideration:

- Fact Sheet
- Map 1 – Zoning Map
- Existing Agreement

The existing agreement was enabled under policies within the Bedford South Secondary Planning Strategy and the Wentworth Secondary Planning Strategy. This request can be considered under the applicable policies.

In preparing your recommendation to North West Community Council, kindly advise whether the committee has any issues or feedback in regards to this request.

FACT SHEET

PLANNING APPLICATION CASE NO. 21213

An application has been submitted by Ariana Properties for a non-substantive amendment to an existing development agreement for lands located at 285 Larry Uteck Blvd, Halifax to allow for an extension to the construction completion dates.



SITE INFORMATION

Plan Area	Halifax Municipal Planning Strategy
District	16
Regional Plan Designation	Urban Settlement
Community Plan Designation	Residential Neighborhoods under the Wentworth Secondary Planning Strategy
Current Zoning	WCDD (Wentworth Comprehensive Development District Zone) under the Halifax Mainland Land Use By-Law
Size of Site	10.8 acres (470,000 square feet)
Street Frontage	Approximately 235 metres (770 feet)
Current Land Use	Vacant
Surrounding Uses	Multi-unit residential development

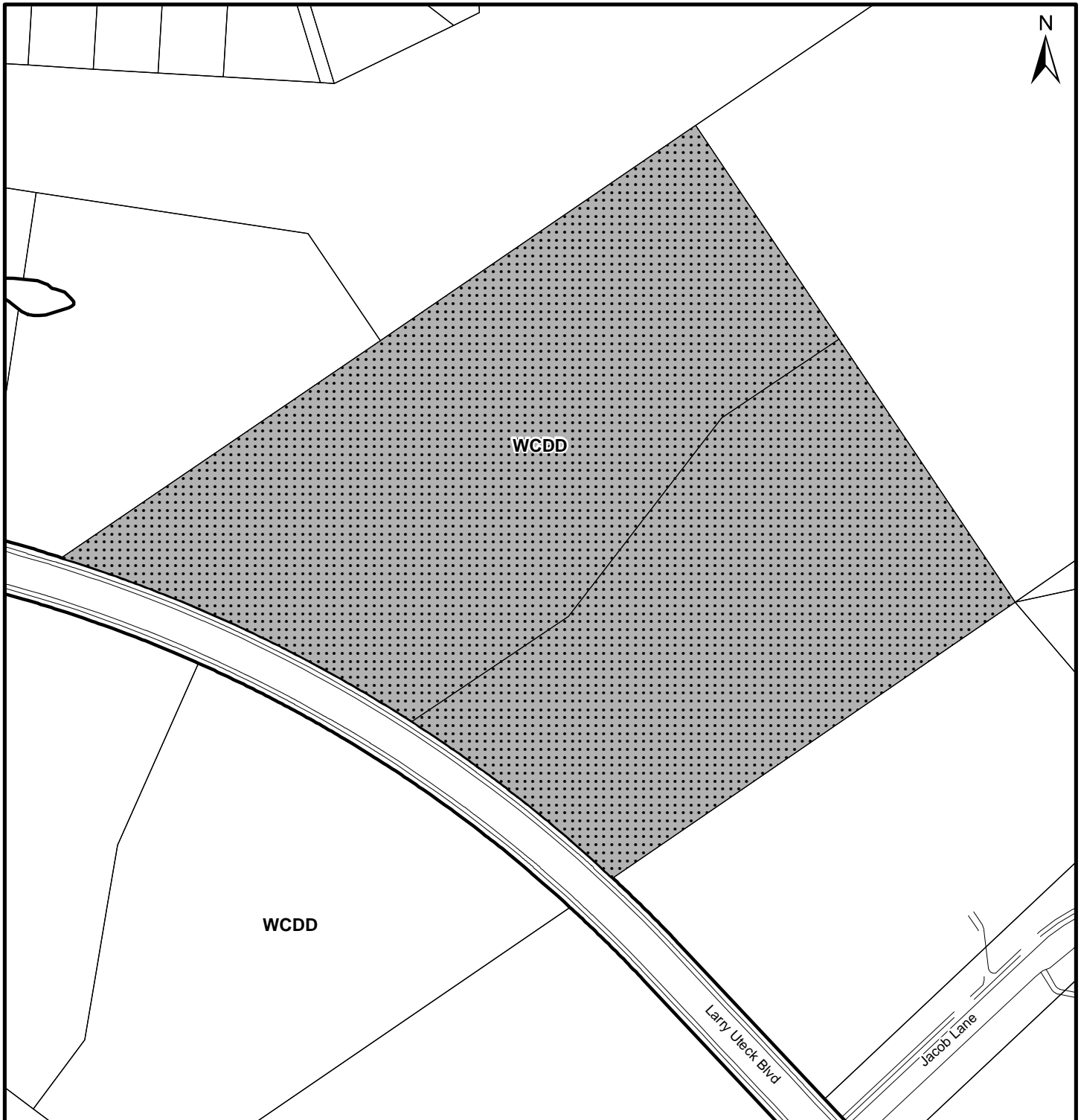
PROPOSAL DETAILS

The existing development agreement requires the completion of the development by January 14, 2018. This proposal is to revise the agreement to allow for completion by January 14, 2024. The applicant has advised that the a 6-year time extension is required to allow for the completion of two twelve-storey apartment buildings in succession, with each building anticipated to take approximately three years to complete.

APPLICABLE POLICY

The existing development agreement was enabled under the Bedford South Secondary Planning Strategy and the Wentworth Secondary Planning Strategy.

For further information, please visit <https://www.halifax.ca/business/planning-development/applications/case-21213-285-larry-uteck-blvd-halifax> or contact **Melissa Eavis**, Planner II, 902-490-3966, eavism@halifax.ca

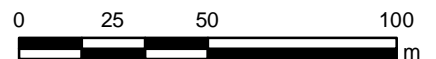


Map 1 - Zoning
285 Larry Uteck Boulevard
PID 41340928 & 41379264

HALIFAX

 Subject Site

Zone
 WCDD Wentworth Comprehensive
 Development District



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Halifax Mainland Land
 Use By-Law

EXISTING AGREEMENT

THIS AGREEMENT made this 8th day of January, 2006^{cm}

BETWEEN:

**3020164 NOVA SCOTIA LIMITED and
3030726 NOVA SCOTIA LIMITED**
(hereinafter called the "Developers")

APPROVED AS TO FORM
Original Signed

Municipal Solicitor

OF THE FIRST PART

- and -

THE HALIFAX REGIONAL MUNICIPALITY
a body corporate, in the County of
Halifax, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located to the north of the Royale Hemlocks subdivision and west of the Bedford Highway in Halifax, and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement relating to the detailed design and planning for residential buildings on the portion of the Lands shown on Schedule "B", Schedule "C" or Schedule "D" pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Mainland Land Use By-law for Halifax;

AND WHEREAS the Chebucto Community Council of Halifax Regional Municipality approved this request at a meeting held on September 18, 2006, referenced as Municipal Case Number 00624;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

- 1.1 The Developer agrees that the Lands shall be subdivided, developed and used only in accordance with and subject to the terms and conditions of this Agreement.
- 1.2 Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Land Use By-law of Mainland Halifax, as may be amended from time to time.
- 1.3 Except as otherwise provided for herein, the subdivision of the Lands shall comply with the requirements of the Subdivision By-law of Halifax, as may be amended from time to time.

- 1.4 Further to Section 2.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by law of the Municipality applicable to the Lands (other than the Land Use By law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by laws and regulations in connection with the development and use of the Lands.

The Developer shall be responsible for securing all applicable approvals associated with the on site and off site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by laws, standards, policies, and regulations of HRM and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer.

- 1.5 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law and Subdivision By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.5.1 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

- 1.6 The Developer and each lot owner shall be responsible for all costs, expenses, liabilities and obligations imposed on the Developer by this Agreement or incurred in order to satisfy the terms of this Agreement and all federal, provincial and municipal regulations, by-laws or codes applicable to any Lands owned by the Developer or lot owner.

- 1.7 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 Use

- 2.1.1 The Developer shall construct buildings on the Lands, which, in the opinion of the Development Officer, are substantially in conformance with the Schedules (Plans inclusive) filed in the Halifax Regional Municipality Planning and Development Services Department as Case 00624. The footprints shown on the Schedules are to be generally illustrative of the placement of the buildings. The Developer may choose to develop in accordance with Alternative A, or Alternative B or Alternative C or a combination hereof. The schedules are:

Schedule "A"	Legal Description of the Lands
Schedule "B"	Site Development Plan-Scenario A

Schedule "C"	Site Development Plan- Scenario B
Schedule "D"	Site Development Plan- Scenario C

2.1.2 Construction/Sales Trailer

A trailer(s) shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The construction trailer shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

2.2 Development Standards

2.2.1 The maximum number of dwelling units shall not exceed 468 multiple and townhouse dwelling units and single detached dwelling units off the extension of Wagner Avenue. However, the Development Officer may permit a 5 percent increase (25) in the number of dwelling units provided the intent and all provisions of this Agreement have been adhered to. The overall density of the entire parcel as shown as Area B on Schedule III Community Concept Plan in Section XIV: The Wentworth Secondary Planning Strategy shall be a maximum of 20 persons per acre. Population shall be calculated based on an assumed occupancy of 3.35 persons per single, duplex or semi-detached or townhouse dwelling and 2.25 persons per dwelling in each multiple dwelling. Commercial densities shall be calculated to a maximum of 30 persons per acre.

2.2.1.1 The lots on the extension of Wagner Avenue in Fernleigh Park shall be permitted the following uses: single detached one-family dwelling; the office of a professional person located in the dwelling house used by such professional person as his private residence; a home occupation; uses accessory to any of the foregoing uses in accordance with the standards set out in the R-1 (Single Family Dwelling Zone) of the Halifax Land Use Bylaw (Mainland Area) except that the minimum frontage shall be 60 feet and the minimum lot area shall be 6,000 square feet. Any dwelling shall be required to be serviced by both a municipal sewer and water system.

2.2.2 The multi-unit buildings shall be at least five habitable storeies above ground level. The maximum number of habitable stories shall be twelve exclusive of underground parking and roof structure including penthouse. No more than 15 percent of the roof structure may be occupied as habitable space.

2.2.3 No buildings shall be constructed except in conformance with the provisions of this Agreement and all applications for development permits shall include at least the following information:

- (a) elevation drawings showing the proposed design, exterior appearance, height, material, and signage;
- (b) yard dimensions, building dimensions and measures to buffer adjacent uses;
- (c) parking area layout, lighting and recycling facilities and landscaping;
- (d) amenity space (indoor and outdoor);
- (e) municipal services;

- (f) grading and drainage plan;
- (g) erosion and sedimentation control plan;
- (h) vehicular and pedestrian access;
- (i) landscaping and maintenance plan; and
- (j) non-disturbance areas.

2.2.4 Design Criteria

Multiple Buildings

Multiple unit buildings shall meet the following design criteria:

- (a) Architectural detailing including, but not limited to, lintels, pediments, pilasters, columns, porticos, overhangs, cornerboards, frieze, fascia boards, shall be incorporated.
- (b) Architectural treatment shall be continued, in its major features, around all sides equally.
- (c) Exterior building materials shall not include vinyl siding, except for accents, or unpainted or exposed wolmanized wood.
- (d) Continuity and consistency in design shall be incorporated in all buildings that are in a grouping in order to provide a cohesive development.
- (e) Propane tanks and electrical transformers and all other exterior utility boxes shall be located and secured in accordance with the applicable approval agencies. These facilities shall be screened by means of opaque fencing, structural walls and/or suitable landscaping .
- (f) Electrical power, telephone, cable and similar utilities shall be brought by underground conduit to the building.
- (g) Any exposed foundation in excess of 2 feet in height and 20 square feet in total area shall be architecturally detailed or veneered with stone or brick

2.2.5 Waste Management in Apartment Structures

2.2.5.1 The building shall include designated space for three stream (refuse, recycling and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources.

2.2.5.2 Refuse containers and waste compactors shall be confined to the loading areas of each building, and shall be screened from public view where necessary by means of opaque fencing/masonry walls with suitable landscaping.

2.2.5.3 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street or sidewalk. Further, consideration shall be given to locating of all refuse and recycling material to ensure minimal affect on abutting property owners by means of opaque fencing/masonry walls with suitable landscaping.

2.2.6 R-4 (Multiple Dwelling) Zone Requirements

2.2.6.1 Subject to the provisions of this Agreement, the multiple unit residential buildings shall meet the requirements of the R-4 (Multiple Dwelling) Zone and other applicable provisions including any setbacks from a watercourse, which shall be a minimum of 66 feet, of the Halifax Mainland Land Use By-law as may be amended from time to time except for the density provisions related to a maximum persons per acre of 75.

2.2.6.2 A temporary sign depicting the names and/or corporate logo of the Developer and the development shall be permitted on the site and shall be removed prior to the issuance of the last Occupancy Permit.

2.2.7 Development Standards for the Townhouse Dwellings

The townhouse dwellings shall meet the following standards:

Minimum Lot Area: 1,800 square feet

Minimum Lot Frontage: 18 feet per townhouse

Maximum height: 35 feet

Minimum Side Yards Between Building Blocks: 8ft. for a total separation distance of 16ft.

Minimum front yard: 20 feet

Minimum Flankage Yard along Larry Uteck Blvd.: 30ft.

Minimum Rear yard: 20 feet

Required Parking: A minimum of 2 spaces per dwelling unit shall be provided.

Subdivision: Subdivision of the individual units shall be permitted along the common wall, therefore permitting a zero side yard between adjoining units if the units front on a public street.

Private Driveway: The townhouse development will be permitted to be developed on a private driveway. The above regulations apply if townhouse development is built on a private driveway; except that no subdivision of the townhouse units would be permitted.

Watercourse setback: Shall meet any setbacks from a watercourse, which shall be a minimum of 66 feet, of the Halifax Mainland Land Use By-law as may be amended from time to time.

2.2.8 Design Criteria Townhouse Buildings

The townhouse buildings shall meet the following design criteria:

- (a) Architectural detailing including, but not limited to, lintels, pediments, pilasters, columns, porticos, overhangs, cornerboards, frieze, fascia boards, shall be incorporated.
- (b) Architectural treatment shall be continued, in its major features, around all sides equally.
- (c) Vinyl siding may be utilized to a maximum of 20 percent on front elevations. Front elevations facing Larry Uteck Boulevard shall be limited to 50 percent vinyl siding. Vinyl siding may be permitted along the side and rear of the units.
- (d) Continuity and consistency in design shall be incorporated in all building that are in a grouping providing a cohesive development.

- (e) Propane tanks and electrical transformers and all other exterior utility boxes shall be located and secured in accordance with the applicable approval agencies. These facilities shall be screened by means of opaque fencing, structural walls and/or suitable landscaping and shall not be permitted in any yards adjacent to Larry Uteck Boulevard.
- (f) Electrical power, telephone, cable and similar utilities shall be brought by underground conduit to the building.

2.3 Landscaping and Site Design

- 2.3.1 A detailed Landscape Plan prepared by a Landscape Architect (that is a full member, in good standing, of Canadian Society of Landscape Architects) shall be submitted with the application for Development Permit. The detailed landscape plan shall include, as a minimum, planting as identified in this Agreement and shall identify measures to provide a buffer and/or screening between the building and adjacent residential properties as well as for aesthetic enhancement. The plan should maintain as much of the natural landscape and vegetation as can be reasonably achieved.
- 2.3.2 Street trees shall be in accordance with the HRM Municipal Service Specifications
- 2.3.3 Salt tolerant high branching deciduous street trees, a minimum of 2.4 inch caliper, will be required to be planted with a 25 foot on centre spacing along the internal driveway.
- 2.3.4 Decorative entry plantings should be provided at all main entrances which consist of a combination of small decorative trees, shrubs and ground covers.
- 2.3.5 Screen planting in the form of upright shrubs with a minimum of 50% being coniferous are to be located at the base of all retaining walls. All shrubs are to be a minimum height of 2 feet and be planted with a minimum on centre spacing of 2 feet. Low maintenance ground covers, shrubs, or vines in association with retaining walls should be proposed. The shrub material is to also screen any electrical transformer or other utility boxes.
- 2.3.6 The Developer shall ensure that all soft landscape areas, with the exception of the non-disturbance area, walkways, and driveways are to be provided with low maintenance material such as beach stone or another type of mulch, sod, or low maintenance groundcover. The sod is to conform to the Canadian Nursery Sod Growers' Specifications. The Developer shall ensure that all plant material is to conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and this shall be shown on the landscape plan.
- 2.3.7 Unfinished concrete surfaces on any podium or underground parking structure shall be treated with a combination of materials such as unit pavers, beech-stone, low shrub plantings, mulched areas, sodding and ground cover, for example.
- 2.3.8 The main entrance walkway to each building is to be decorative concrete, unit paving or equivalent. The proposed pathways are to be crushed stone, pea gravel, crushed brick or equivalent. Any pathways within the non-disturbance areas are to meet the

requirements of the non-disturbance area. The pathways are to be lit with pedestrian scale 12 volt lighting or equivalent.

- 2.3.9 All proposed retaining walls in the rear yard are to be armour stone or equivalent but any retaining wall in a location which is readily visible from Larry Uteck Boulevard or adjacent the main entrance is to be constructed of a decorative rock with a precast concrete cap or equivalent.
- 2.3.10 All driveways and circulation aisles shall be asphalt or concrete. All parking lots are to be delineated by curbing which shall be concrete. Parking stalls shall be delineated by painted lines.
- 2.3.11 Vehicle access to the apartment complexes will be permitted off Larry Uteck Boulevard at the locations shown on the attached Schedules and are to provide for two way vehicle access simultaneously. All driveway accesses are to meet the requirements of By-Law S-300.
- 2.3.12 The Developer shall submit a completion certificate prepared by a member in good standing of the Atlantic Provinces Association of Landscape Architects to the Development Officer stating that all landscaping is in compliance with the terms of the Development Agreement prior to the issuance of the occupancy permit for an applicable building.

2.4 Tree Preservation

- 2.4.1 The Developer agrees that tree retention is an important objective. Every effort is to be made to ensure the preservation of the existing living trees, three inches or greater in diameter. The landscape plan shall identify the limit of disturbance, the protective hoarding fence, type, and location as well as stockpile locations for topsoil and construction materials.
- 2.4.2 Proper arboriculture practices shall be undertaken and shall include such activities as the erection of tree protective fence located as close to the dripline of the trees to be preserved as possible for the duration of construction, and the pruning of any damaged limbs or roots. No stockpiling of soil or materials within the hoarded areas, or excavation/soil disturbance within ten feet to the trunk of any tree to be preserved will be allowed.
- 2.4.3 Notwithstanding sections 2.4.1 and 2.4.2 of this Agreement, where a Certified Arborist, Landscape Architect, Landscape Technologist, Urban Forester or other person with an equivalent degree or diploma engaged by the property owner certifies in writing that a tree poses a danger to people or property or is in severe decline, the Development Officer may permit the tree to be removed.
- 2.4.4 Any trees to be preserved that are damaged or improperly removed shall be replaced, two new trees for each damaged tree, with trees of the same type and with minimum sizes of 2.4 inch caliper for deciduous trees and coniferous trees a minimum of 5 feet high.
- 2.4.5 The area within the limit of disturbance is to be preserved intact including native

understorey shrub material and native groundcovers with the exception of any invasive plant materials identified by the Landscape Architect and shown on the landscape plan.

2.5 Maintenance

2.5.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the building, retaining walls, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal including salting or sanding of walkways and driveways.

2.6 Streets and Municipal Services

2.6.1 The street network shall be developed as generally shown on the Schedules. All street construction shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Officer. The Development Officer may give consideration to minor incidental changes to the street network, provided the modifications serve to maintain or enhance the intent of this Agreement.

2.6.2 The developer and the adjacent land owners shall submit and receive approval for the entire design of Larry Uteck Boulevard to the intersection with Southgate Drive. The intent is to encourage the blasting and mass work to proceed at the same time.

2.6.3 The Developer shall, in accordance with the Capital Cost Contribution policy, construct the extension of Larry Uteck Boulevard. All work shall be completed and operational at the time of final approval of subdivision of the applicable Phase or building, or as otherwise directed by the Municipality. The Developer shall complete the extension of Larry Uteck Boulevard to the far edge of the property (presently owned by Clayton Developments) within 18 Months of the date of execution of this Development Agreement. If Larry Uteck Boulevard is not completed within the required time frame Halifax Regional Municipality may complete the roadway and charge the property owner directly. This may include placing a lien on the property.

2.6.4 The Developer shall construct a paved temporary cul-de-sac at the end of the completed portion of Larry Uteck Boulevard until such time as the next phase of development is complete.

2.6.5 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer.

2.6.6 The Developer agrees to design and construct the storm and sanitary system in accordance with the Master Stormwater Management Plan for the Wentworth/Bedford South Master Plan.

- 2.6.7 Any stormwater management facility proposed within any "Parkland" area as identified on the Schedules shall be reviewed and approved by the Development Officer. The Developer agrees that such facility shall be designed and constructed in a manner which is consistent and compatible with the public use of the area.
- 2.6.8 Pursuant to this Section (Section 2.6), no occupancy permit shall be issued for any building on the Lands until all street improvements, municipal servicing systems and utilities have been completed, except that the occupancy permit may, at the discretion of the Municipality, be issued subject to security being provided to the Municipality in the amount of 120 per cent of the estimated cost of completion, as provided by the Developer, of all outstanding work. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or irrevocable letter of credit, with automatic renewal, issued by a chartered bank. The security shall be returned to the Developer only upon completion of all work, as described herein and illustrated on the Schedules, and as approved by the Municipality

2.7 Municipal Water System

- 2.7.1 Prior to development, the Developer agrees to submit, at its own expense, to the Development Officer a Technical Servicing Report and a set of detailed engineering plans demonstrating that proposed water supply and distribution system is in accordance with the Birch Cove North Water Infrastructure Master Plan, prepared by CBCL and specifications of the Halifax Regional Water Commission. The Technical Servicing Report shall detail and provide the technical support for the proposed phasing and servicing arrangements under interim and ultimate development scenarios.
- 2.7.2 The Developer agrees to design and construct, at its own expense, the water supply and distribution system in accordance with specifications of the Halifax Regional Water Commission including a suitable alignment and profile and conveyance of an easement at the time of acceptance. The water supply and distribution system includes:
- (a) a 300mm diameter distribution main along the full length of Larry Uteck Blvd that is within the "Lands" and:
 - (b) a 300 mm diameter Intermediate Zone distribution main extended from the present or proposed terminus at the Emscote boundary line northward to the termination point at the existing Wagner Drive in the Fernleigh subdivision. The standard width necessary to allow vehicle and equipment access is 6 metres.
- 2.7.3 The distribution main is not eligible for cost-sharing with monies for the Birch Cove North Water Capital Cost Area (filed as NSUARB-W-HFXR-R-99of September 17, 1999) as it is only 300 mm in diameter. The actual location of this Intermediate Zone distribution main will be determined after an engineering study. The Developer shall have this Intermediate Zone distribution main operational and taken over by the HRWC five years from the date of this Agreement or after three apartment buildings have occupancy permits, whichever comes first. No bonding or other guarantee shall be required if this Intermediate Zone distribution main is not turned over to the HRWC during the subdivision stage.

- 2.7.4 This land is located in the Birch Cove North Water Service District and is subject to a capital cost contribution in the amount of \$5,060.00 per acre. The Nova Scotia Utility and Review Board (NSURB) approved an interim application on September 17, 1999 for the noted amount and at a future date a final application will be made and approval will be received for a final rate. Should there be a difference between the interim and final rates an adjustment will be made by HRWC or the Developer within 30 days of the date of the NSURB order granting final approval. These lands are subject to a capital cost contribution from the Birch Cove North Water Service District and this is required to be paid to the Commission prior to the approval of the service connection.

2.8 Fire Services

- 2.8.1 Burning of site material such as but not limited to vegetation, brush and trees shall be prohibited.

2.9 Environmental Protection

Erosion and Sedimentation Control

- 2.9.1 The provisions of the Master Stormwater Management Plan for Wentworth Estates/Bedford South Plan Area dated Oct 7, 2002 and more specifically Appendix "F" -Neighbourhood "B" Storm Water Management Plan shall generally apply as the guiding document in the preparation of detailed erosion and sedimentation plans.
- 2.9.2 The Developer agrees to have prepared by a Professional Engineer and submitted to the Municipality for review and approval by the Development Officer and the Nova Scotia Department of the Environment and Labour a detailed Erosion and Sedimentation Control Plan for each Phase or subdivided lots of land based on the provisions of the Schedules. The plans shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by the Nova Scotia Department of the Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.
- 2.9.3 The Parties agree that the Stormwater Management Plan and Erosion and Sedimentation Control Measures listed in the Schedules are intended as general guidelines only. The Developer further agrees that prior to the commencement of any work on any Phase of the Lands, or associated off-site works, detailed Plans shall be submitted and require the approval of the Development Officer. The Plans shall indicate the sequence of construction, the areas to be disturbed, any non-disturbance areas, all proposed erosion and sedimentation control measures and stormwater management measures, including a monitoring/sampling program, which are to be put in place prior to and during development of that Phase.
- 2.9.4 Conformance to the Erosion & Sedimentation Control plans and Stormwater Management System shall be a condition of all permits, and the Development Officer shall require the Developer to post security in the amount of 2,500 dollars per acre of area (which will be deemed to include any Top Soil Permit Fees) to be disturbed

to ensure that the environmental protection measures are properly implemented and maintained for each Phase, prior to the issuance of a Top Soil Removal Permit. The security shall be in favour of the Municipality and may be in the form of certified cheque or irrevocable, automatically renewable letter of credit issued by a chartered bank. The security shall be returned to the Developer when all work for which environmental protection measures are required is satisfactorily completed, including the completion of the stormwater management system, monitoring program and certification from the Professional Engineer that the system or any phase therefore, has been constructed and completed in accordance with the approved design.

- 2.9.5 The Developer agrees to construct at its own expense the Stormwater Management System which conforms to the concept design approved by the Development Officer pursuant to this section. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.
- 2.9.6 The Developer shall obtain the necessary approvals from the Nova Scotia Department of the Environment and Labour in order to alter any wetlands or watercourses, as required. A copy of the approval shall be provided by the Developer to the Development Officer prior to the final approval of subdivision of the applicable Phase, or as otherwise directed by the Municipality. If approval is granted by the Nova Scotia Department of the Environment and Labour, the Developer agrees, at its own expense, to complete the conditions of compensations established by the Nova Scotia Department of the Environment and Labour and to complete the conditions of compensation in the time frame established by Nova Scotia Department of Environment and Labour. The conditions of compensation may include, shall be but not limited to, interpretative signage along the Old Coach Road.
- 2.9.7 All earthworks and construction on the Lands shall comply with the requirements of the stormwater management plans and the erosion and sedimentation plans.
- 2.9.8 The Developer agrees to have prepared by a Professional Engineer and submitted to the Municipality for review and approval by the Development Engineer a detailed Master Site Grading Plan for each Phase or subdivided lot of land. No work is permitted on the site until the requirements of this clause have been met and implemented unless otherwise stated in the Agreement.
- 2.9.9 The Developer agrees not to commence clearing, excavation, grading or blasting activities until a Municipal Service Agreement has been executed. Notwithstanding the previous statement, the Development Officer may authorize the clearing of trees and grubbing within the proposed street right-of-way and adjacent area subject to the other conditions in this Agreement.
- 2.10 Non-Disturbance Areas
- 2.10.1 Non-disturbance areas for individual phases, and lots shall be identified at the time of detailed site and/or grading plan approval to maximize tree retention within each phase. These non-disturbance areas shall conform to those as shown on the attached Schedules as natural areas to be retained. All grading plans shall indicate areas where

existing vegetation is to be maintained, areas to be protected from disturbance during the installation of services, construction of streets, construction of buildings, landscaping and any future activity on an individual lot unless otherwise specified in this Agreement. The non-disturbance areas shall be clearly delineated on the site and grading plans for each lot and in the field prior to and during construction.

2.10.2 The Development Officer may approve the following activities within the non-disturbance areas if the materials, design, and layout are sympathetic to the location:

- (c) removal of trees of less than three inch caliper;
- (b) removal of fallen timber and dead debris;
- (c) placement of a natural based informal pathway (ie. mulch, wood chip or appropriate equivalents);
- (d) construction of small landscape structures such as benches, gazebos, sheds, or fences provided the placement of these structures results in minimal soil disturbance and minimal removal of vegetation;
- (e) placement of a retaining wall for the purpose of soil stabilization which is constructed of natural stone or simulated natural-appearance materials; and
- (f) placement of municipal services, power lines or other utility or service infrastructure.

2.10.3 Non-disturbance lines shall be identified by the Developer in consultation with the consultant's landscape architect (with snow fence, protective hoarding, or other appropriate barrier) in the field prior to any site preparation (ie. tree cutting or excavation activity) associated with lot construction (ie. buildings, services, driveways and landscaping).

2.10.4 Disturbance may occur within a non-disturbance area if an unsafe condition exists in the opinion of the Development Officer and will remain if disturbance does not occur.

2.11 Trail And Open Space

2.11.1 All "Parkland" and "Open Space" parcels shall be designed and constructed by the Developers in conformance with the guidelines and requirements as specified by the Development Officer. Minor alterations to the final alignment and configuration of the open space and walkway may be considered provided the alterations are mutually consented, for the purpose of improving environmental and safety measures, and to further the intent of this Agreement.

2.11.2 All "Parkland" and "Trail" parcels shall remain in their natural state, undisturbed unless site preparation is required as specified in this Agreement or as approved by the Development Officer. If disturbance does occur without the necessary approvals, the Developer shall, at its own expense, reinstate the area upon the direction of the Development Officer.

2.11.3 The public trail shall be provided by the Developer, at its own expense, as generally shown on the Schedules and subject to the following unless otherwise directed by the

Development Officer. A trail shall also be developed generally over the easement granted to the HRWC for the Intermediate Zone distribution main which will provide for pedestrian movement to and from Wagner Avenue.

- (a) No site disturbance shall take place on the proposed public trail and open space until the site plan, to be submitted by the Developer, has been approved by the Development Officer. The site plan shall include but not be limited to site layout, tree removal, site grading, facility and walkway locations, park signage and location, stormwater management facilities, and surface materials. The Developer may raise, through the use of fill, the elevation of some of the parkland areas as a result of the construction of the Intermediate Zone distribution water main;
- (b) The Developer shall be responsible for the site preparation, construction and completion of the trail. The improvements shall include a minimum of 10 feet wide self-containing granular trail consisting of a compacted gravel base and a crusher dust surface; storm culverts as required; and the border areas with wood chips.
- (c) The Developer agrees, at its own expense, to construct and place signage along the trail indicating motorized vehicles shall be prohibited except maintenance, emergency or patrol vehicles. The design and placement of this signage shall be reviewed and approved by the Development Officer;
- (d) The Developer agrees, at its own expense, to retain a Professional Landscape Architect who is in good standing with the Association to design trail.

2.11.4 The Developer agrees that the "trail" and "Open Space" site preparation and development as described in this Section shall be completed within one year of the completion of Larry Uteck Boulevard, except that the Municipality may, at its discretion, issue final approval subject to security being provided to the Municipality in the amount of 120 per cent of the estimated cost of completion of all outstanding work. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable, automatically renewable letter of credit in the Municipality's name issued by a chartered bank. The security shall be returned to the Developer only upon completion of all work, as described herein and illustrated on the Schedules, and as approved by the Municipality. If outstanding work is not completed within one year from the date of the certified cheque or irrevocable, automatically renewable letter of credit, the Municipality may cash the cheque or letter of credit for the amount owing to complete the outstanding work and complete the necessary work.

2.11.5 The Developer shall deed the lands for the trail and the open space at the completion of the required work with an easement granted to the HRWC for the Intermediate Zone distribution main.

2.11.6 The Developer shall be responsible for any cost associated with the construction, maintenance and repair of the recreation and open space lands (as described above), and as associated recreation facilities, until such time that HRM legally accepts responsibility for these lands.

2.11.7 HRM shall not legally accept responsibility of these lands until all clauses of this Agreement are adhered to as they apply to the "Parkland" or "Open Space" parcels.

2.11.8 The Development Officer may approve minor changes within this Section provided the integrity of the design and parkland area is maintained or enhanced, and furthers the intent of this Agreement.

2.12 Blasting

2.12.1 All blasting shall be in accordance to By-law B-300 (Blasting By-Law) as amended from time to time. The Developer shall provide a detailed blasting plan outlining the phasing of any blasting taking place on the site. This plan shall be provided to the Development Officer for approval prior to receiving final approval of any blasting permits.

2.12.2 The Developer agrees, at its own expense, to provide a 24hours, 7 day a week phone number where information requests and/or complaints can be registered with the Developer prior to and during the blasting process.

2.13 Building and Site Lighting

2.13.1 All lighting on the Lands, exclusive of signage lighting and street lighting, shall be designed, installed and maintained to supply adequate area lighting and provide adequate security. Lighting shall be directed to all driveways, parking areas, loading areas, building entrances and walkways and away from streets and abutting properties.

2.13.2 No occupancy permit shall be issued for any building until such time as the lighting has been completed. An occupancy permit may be issued, however, provided the Developer supplies a security deposit in the amount of 120 per cent of the estimated cost, as provided by the Developer, to complete the lighting. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable letter of credit, with automatic renewal, issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer.

2.14 Dwelling Units Prior to the Interchange

2.14.1 The Developer shall not seek development or building permits for more than 215 dwelling units on the lands until the interchange has been constructed and connected to Larry Uteck Boulevard. Furthermore the Development Officer shall not grant Development Permits for more than 215 dwelling units on the lands until the interchange has been constructed and connected to Larry Uteck Boulevard.

2.15 Wentworth Charge Area

2.15.1 These lands are in the area known as the Wentworth Charge Area which is designated as a Charge Area in which an Infrastructure Charge is to be levied. The Infrastructure Charge Area is 10,893 dollars per acre based on the average density of 20 persons per acre and is adjusted for the estimated density based on the formula in the Regional Subdivision By-law. These charges are separate from those contained in the Birch Cove North Water Service District.

2.16 Occupancy Permit

- 2.16.1 No occupancy permit shall be issued for any building constructed on the Lands until such time as the landscaping has been completed in accordance with this Agreement, provided however that where such building has been completed and all other terms of this Agreement have been met, an occupancy permit may be issued provided that the Developer supply a security deposit in the amount of 120 percent of the estimated cost to complete the landscaping. The security deposit shall be in favour of the Municipality and shall be in the form of a certified cheque or irrevocable letter of credit with automatic renewal issued by a chartered bank.
- 2.16.2 Should the Developer not complete the landscaping within six months of issuance of the occupancy permit except where weather conditions intervened, the Municipality may use the deposit to complete the landscaping as set in this Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of all work as described herein and illustrated on the Schedules, and as approved by the Municipality.

2.17 Temporary Rock Crusher

- 2.17.1 A temporary rock crusher may only be used for the construction of the proposed development. The temporary rock crusher shall only be operated between the hours of 8:00 a.m. and 8:00 p.m., six days a week, and may not be used for the production of gravel for another site. Such facility shall require a Provincial Pits & Quarry permit, and any other permits and approvals as required by any approval agency.
- 2.17.2 A non-illuminated sign indicating that rock crushing activity will be taking place must be posted in a visible location on the site at least 48 hours in advance of the crushing.

2.18 Tracking

- 2.18.1 The Developer agrees that, with each application for subdivision or a building, a summary table (Density/Audit sheet) of the total land area, sewershed, total number of lots, dwellings or commercial buildings approved to date, by category, and the number of persons per acre shall be submitted. The table shall also show any outstanding applications for which approval has not been granted.

2.19 Concept Plan Approval

- 2.19.1 The above sections shall be deemed to meet the requirements of the Subdivision Bylaw with respect to concept plan approval

PART 3: AMENDMENTS

- 3.1 The provisions of this Agreement relating to the following matters are identified as and shall be deemed to be not substantive and may be amended, upon application by the Developer, by resolution of Community Council:
- (a) The siting of the buildings and building height;
 - (b) Building materials;
 - (c) Number of dwelling units that can be constructed before the interchange has been constructed and connected to Larry Uteck Boulevard. All applicable Development Agreements shall be amended if Community Council determines that there has been compliance with the subsections of Policy MS-7;
 - (d) Landscape specifications and
 - (e) Commencement and completion dates.
- 3.2 Amendments to any matters not identified under Section 3.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

- 4.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.
- 4.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 4.2.1 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 4.3 In the event that the construction of the project has not commenced within four years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, "commencement of construction" shall mean completion of the footings for a building and completion of the building in a reasonable time frame.
- 4.4 If the Developer fails to complete the development, or after ten years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved

and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law, as may be amended.

PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

- 5.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within one day of receiving such a request.
- 5.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:
- (a) the Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submit to the jurisdiction of such Court and waive any defence based upon the allegation that damages would be an adequate remedy;
 - (b) The Municipality may enter onto the Property and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Development Agreement, whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants or remedial action, shall be a first lien on Property and be shown on any tax certificate issued under the Assessment Act.
 - (c) the Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
 - (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written

Signed, Sealed And Delivered)
in the presence of)

Original Signed)

per: _____)

Original Signed)

per: _____)

Sealed, Delivered and Attested)
by the proper signing officers of)
Halifax Regional Municipality)
duly authorized on that behalf)
in the presence of)

Original Signed)

Original Signed)

3020164 Nova Scotia Limited

Original Signed

per: _____

Original Signed

per: _____

3030726 Nova Scotia Limited

Original Signed

per: _____

Original Signed

per: _____

Halifax Regional Municipality

Original Signed J. Kelly

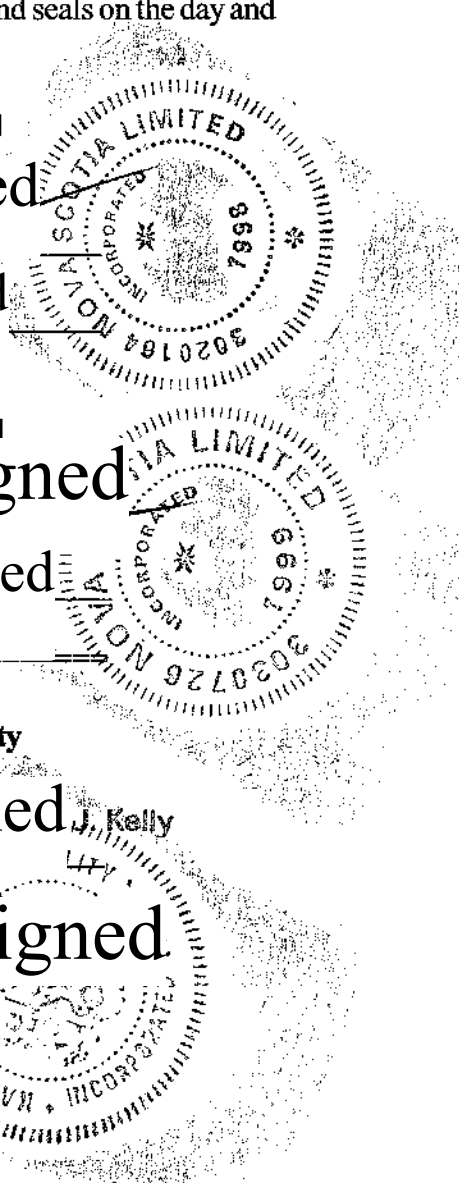
per: _____

MAYOR

Original Signed

per: _____

Acting MUNICIPAL CLERK



PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY

ON THIS 14th day of DECEMBER A.D., 2007, before me, the subscriber personally came and appeared, T.O. BOWE (witness), a subscribing witness to the foregoing Agreement, who having been by me duly sworn, made oath and said that **3020164 NOVA SCOTIA LIMITED and 3030726 NOVA SCOTIA LIMITED**, one of the parties thereto, signed, sealed and delivered the same in his/her presence.

Original Signed

A Commissioner of the Supreme
Court of Nova Scotia

KELLY J. POWELL
A Barrister of the Supreme
Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY

ON THIS 8th day of JANUARY A.D., 2007^{8th}, personally came and appeared before me, the subscribing witness to the foregoing Indenture, who having been by me duly sworn made oath and said that the Halifax Regional Municipality, by its officer, Mayor, ^{in Julia Horncastle, Acting} Peter Kelly, and ~~Jan Gibson~~ Municipal Clerk, signed, sealed and delivered the same in his/her presence.

Original Signed

A Commissioner of the Supreme
Court of Nova Scotia

JENNIFER WEAGLE
A Commissioner of the
Supreme Court of Nova Scotia

SCHEDULE "A"

**PID 40176034
(BLOCK 6)**

ALL THAT PARCEL of land situate on the southwesterly side of Wagner Avenue, at Halifax, in the County of Halifax, Province of Nova Scotia, being designated as Block 6 on a Plan of Survey of Lot 23, Lot 25 and Block 6, Lands of Cornelia Holdings Limited; said plan prepared by Wallace Macdonald & Lively, Ltd. dated November 4, 1998, and signed by Harold S. Lively, N.S.L.S.; said Block 6 having an area of 40.375 acres, more or less, and being more particularly described as follows:

PREMISING that the line joining Nova Scotia Coordinate Monument 70 to Nova Scotia Coordinate Monument 69 has a grid bearing of North 27 degrees 18 minutes 33 seconds West, referred to Meridian 64 degrees 30 minutes West, and relating all bearings herein thereto;

COMMENCING at a survey marker placed on the northwesterly limit of Lot 3, now or formerly lands of Emscot Limited, at the most southerly corner of Lot 6 now or formerly lands of Robert Craig and Muriel Elizabeth Craig as shown on said plan;

THENCE South 55 degrees 34 minutes 34 seconds West along said Lot 3, a distance of 2690.35 feet to a survey marker placed at the most easterly corner of Lands now or formerly of Donald S. Hogan;

THENCE North 33 degrees 48 minutes 19 seconds West along said Hogan lands, a distance of 674.49 feet to a survey marker found at the most southerly corner of Parcel B1 now or formerly lands of Ruth L. Swin;

THENCE North 55 degrees 45 minutes 52 seconds East along Parcel B1, a distance of 2705.77 feet to a survey marker placed at the most westerly corner of Lot 27 now or formerly lands of Barbados Investments Limited;

THENCE South 34 degrees 13 minutes 58 seconds East along Lot 27, a distance of 134.64 feet to a survey marker placed on the northwesterly limit of R-1 now or formerly lands of Sarah Rushdi;

THENCE South 55 degrees 46 minutes 02 seconds West along Lot R-1, a distance of 156.00 feet to a survey marker found at the most westerly corner thereof;

THENCE South 34 degrees 13 minutes 58 seconds East along Lot R-1 and Lot 25, a distance in all of 332.00 feet to a survey marker placed at the most southerly corner of Lot 25;

THENCE North 55 degrees 46 minutes 02 seconds East along Lot 25 and Lot 23, a distance in all of 135.53 feet to a survey marker placed at the most westerly corner of Wagner Avenue;

THENCE South 34 degrees 13 minutes 58 seconds East along Wagner Avenue and Lot 6, a distance in all of 199.00 feet to the point of commencement.

RESERVING and excepting thereout of the herein described Block 6 any lands covered by navigable bodies of water.

SAID Block 6 being subject to any rights vested in the Province of Nova Scotia by virtue of the Environment Act (current to 1998) for any water courses crossing said Block 6.

CONTAINING 40 ACRES more or less.

The above described parcel being a portion of Lands conveyed to 3020164 Nova Scotia Limited by indenture recorded at the Registry of Deeds for the County of Halifax in Book 6320, Page 559.

Original Signed

Carl K. Hartlen, NSLS
July 20, 2007

SCHEDULE "A"

**PID 00289165
(BLOCK 4)**

ALL THAT PARCEL of land situate on the northeasterly side of Highway No. 102 (Bi-Centennial Drive) at Halifax, in the County of Halifax, Province of Nova Scotia, being designated as Block 4 on a Plan of Survey of Lot C-1, Block 4 and Block 4A Lands of Hogan Properties Limited; said plan prepared by Wallace Macdonald and Lively, Ltd., dated January 27, 1999 and signed by Harold S. Lively, N.S.L.S.; said Block 4 having an area of 102.939 acres, more or less. The said Block 4 being more particularly described in a plan filed at the Halifax Registry of Deeds as plan or document number 33148 in Drawer 363.

SAVING AND RESERVING thereout and therefrom any lands covered by navigable bodies of water.

SUBJECT TO any rights vested in the Province of Nova Scotia by virtue of the Environment Act for any water courses situated on or crossing the herein before described Block 4.

CONTAINING 103 ACRES more or less.

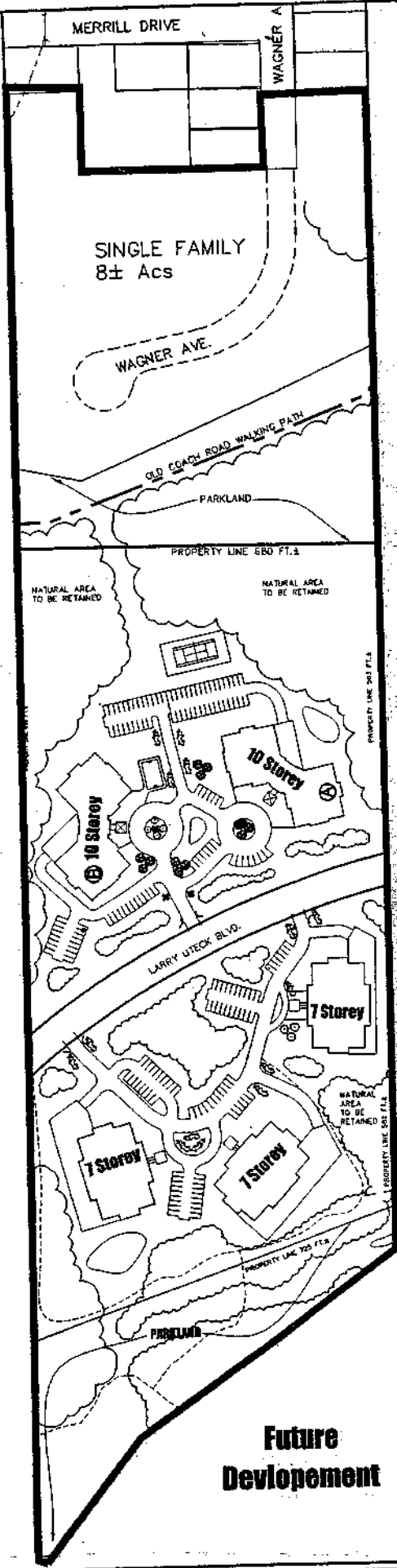
The above parcel being a portion of Lands conveyed to 3030726 Nova Scotia Limited by indenture recorded at the Registry of Deeds for the County of Halifax in Book 6453, Page 185.

Original Signed

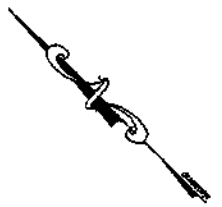
Carl K. Hartlen, NSLS
July 20, 2007

Lands of Clayton Developments Ltd.

Lands of Emscote Ltd.



**Future
Development**

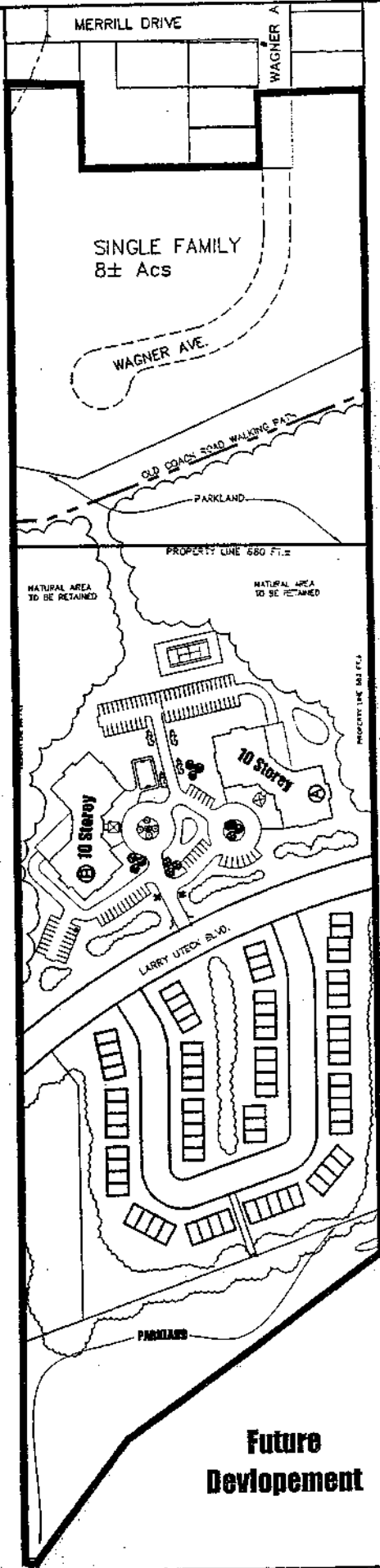


**Schedule 'B'
Site Plan Scenario 'A'
Lands of Cresco Homes Ltd.**

June, 2006

Lands of Clayton Developments Ltd.

Lands of Emscote Ltd.

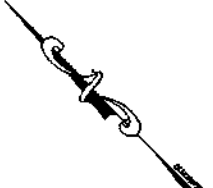
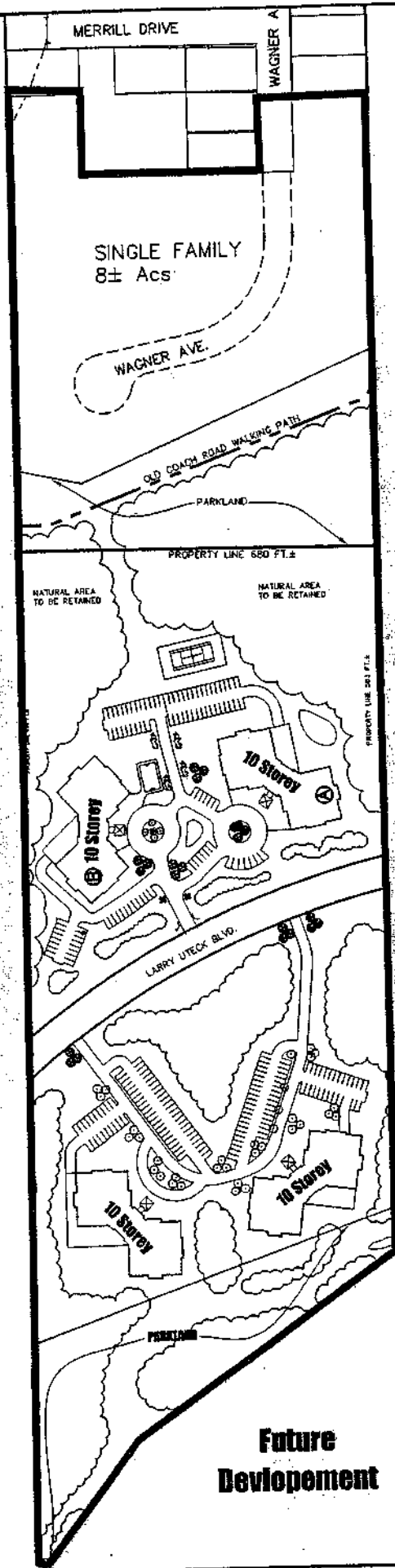


June, 2006

Schedule 'C'
Site Plan Scenario 'B'
Lands of Cresco Homes Ltd.

Lands of Clayton Developments Ltd.

Lands of Enscote Ltd.



June, 2006

Schedule 'D'
Site Plan Scenario 'C'
Lands of Cresco Homes Ltd.