



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 13.1.1
North West Community Council
September 12, 2016

TO: Chair and Members of North West Community Council

Original Signed

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: August 11, 2016

SUBJECT: Case 20702: Discharging Agreement – 133 Duffus Drive, Bedford

ORIGIN

Application by Jeffrey and Megan Barss

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter); Part VIII, Planning & Development

RECOMMENDATION

It is recommended that the North West Community Council:

1. Approve, by resolution, the proposed Discharging Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharging Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Jeffrey and Megan Barss are applying to discharge the existing Development Agreement on their lands at 133 Duffus Drive, Bedford:

Location	133 Duffus Drive, Bedford (Lot 31A under the Oakridge Estates Subdivision)
Community Plan Area	Bedford
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Residential (R) under the Bedford Municipal Planning Strategy
Zoning (Map 2)	Residential Two Dwelling Unit (RTU) under the Bedford Land Use By-law
Size of Site	Approximately 485.9 square metres (5,230 square feet)
Street Frontage	Approximately 6 metres (20 feet) on Duffus Drive
Current Land Use(s)	Linked dwelling unit
Surrounding Use(s)	<ul style="list-style-type: none">• Linked dwellings• Semi-detached dwellings• Single unit dwellings• Single unit dwellings with basement apartments• HRM parkland (Nicholas Meaghers Park)• Waverley Road Elementary School

Proposal Details

The applicant wishes to discharge the existing Development Agreement (see Attachment B) on their lands to allow for an addition (14 feet 6 inches by 13 feet) to their linked dwelling unit. The proposed discharge of the existing Agreement will allow the property to be completely regulated under the RTU Zone of the Bedford Land Use By-law (LUB). While the existing Development Agreement permitted the linked dwelling use, it also limited the size of linked homes to a bulk and scale that is less than what is currently permitted under the RTU Zone. Attachment C contains the requirements of the RTU Zone.

History

On September 25, 1989, the former Town of Bedford entered into the existing Development Agreement with Redden Brothers Development Ltd. to permit a subdivision inclusive of linked dwelling units, single unit dwellings with basement apartments, as well as the conversion of three existing single unit dwellings into two dwelling units. At the time, both linked dwelling units and single unit dwellings with basement apartments were not permitted under the Bedford LUB. A linked dwelling unit was subsequently constructed at 133 Duffus Drive in accordance with the requirements of the existing Development Agreement.¹

On March 26, 1996, the former Town of Bedford Council adopted a new Bedford LUB which assigned the RTU Zone to the subject property.

Discharge of Development Agreements

The Halifax Regional Municipality Charter provides Council with a mechanism to discharge development agreements. Part VIII, Section 244, identifies that Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property

¹ HRM records show that an Occupancy Permit for the linked dwelling unit was issued on July 5, 1990.

owner. The Charter does not require a public hearing for the discharge of an agreement or a portion thereof. A development agreement may be discharged by resolution of Community Council.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement is information sharing, achieved through providing information through the HRM website. A public information meeting or a public hearing is not required, nor is it the practice to hold such meetings for the discharge of a development agreement. The decision to discharge a development agreement is made by resolution of Community Council.

The proposed discharge will have no impact on local residents, property owners or other stakeholders as the existing underlying zone allows the existing building and land use.

DISCUSSION

Section 18 of the existing Development Agreement specifies that Council may discharge the Agreement on the condition that the Developer's rights under the Agreement are preserved by accommodating the use under the Bedford Municipal Planning Strategy (MPS) and Bedford LUB. Staff has reviewed the proposal relative to all relevant policies (see Attachment D) and land use by-law provisions and advise that it is consistent with the intent of the Bedford MPS and the provisions of the Bedford LUB.

The RTU Zone is currently applied to the lands and the existing linked dwelling use is permitted under this zone. As for the building itself, the only LUB requirement that will not be met with the discharge will be the minimum common side yard for link homes which is required to be 2.5 feet. The linked dwelling unit is currently constructed at 2.25 feet from the common side lot line. However, since the linked dwelling unit was constructed prior to the 1996 Bedford LUB, it can be considered a non-conforming use and will be allowed to be expanded as long as the addition does not bring the building closer than 2.25 feet from the common side lot line and all other requirements of the LUB are being met.

Conclusion

The proposed discharge would enable the subject property to be developed in accordance with the provisions of the existing underlying RTU Zone. Therefore, staff recommends that Community Council discharge the existing Development Agreement through the Discharging Agreement contained in Attachment A.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed Discharging Agreement. The administration of the proposed Discharging Agreement can be carried out within the approved 2016/2017 budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the Nova Scotia Utility and Review Board. Information concerning risks and other implications of adopting the proposed Discharging Agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. North West Community Council may choose not to discharge the existing Development Agreement and therefore, development on the property would remain subject to the conditions of the Agreement. A decision of Council to refuse to discharge a development agreement is appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

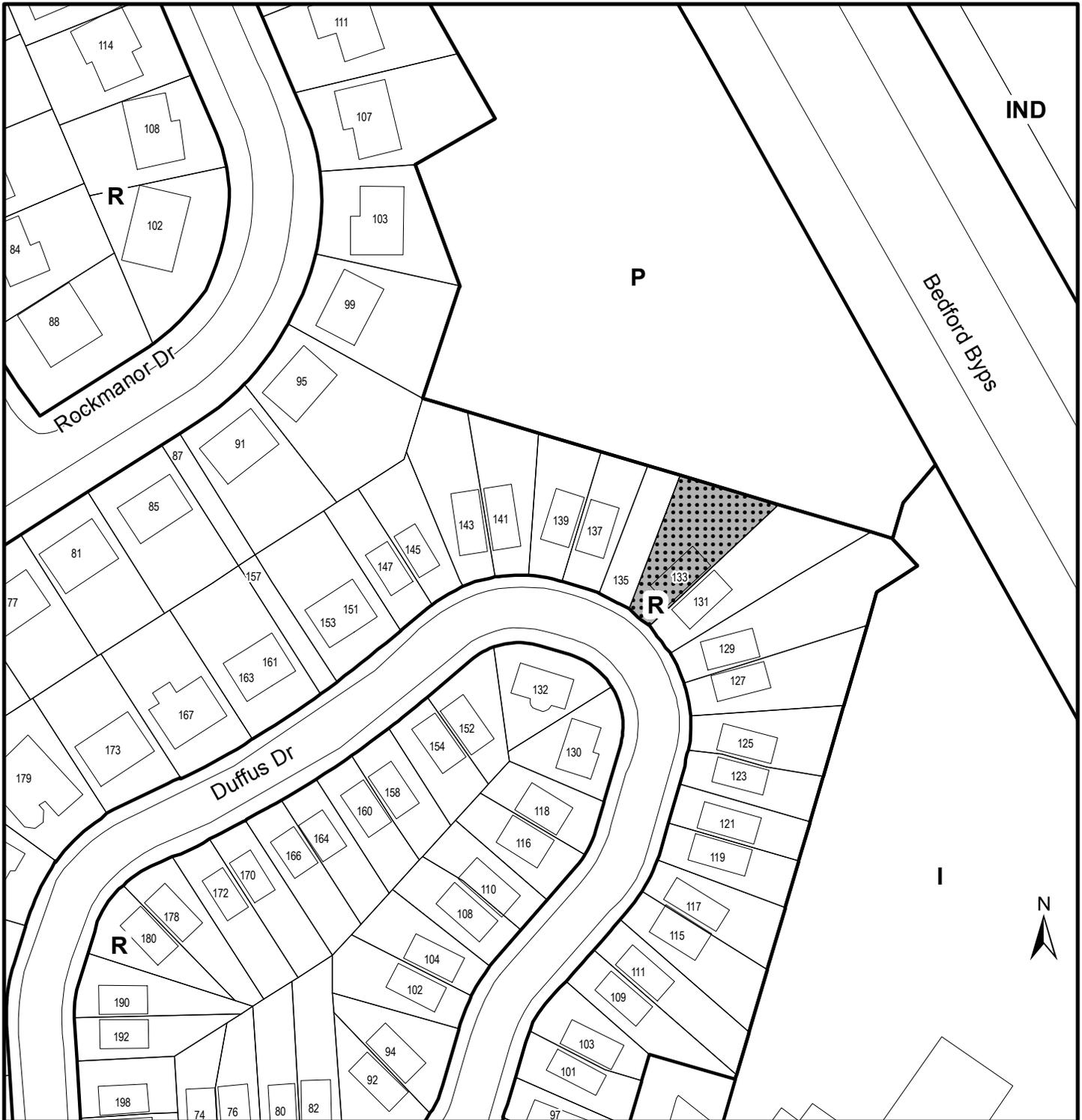
ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning
Attachment A	Discharging Agreement
Attachment B	Existing Development Agreement
Attachment C	RTU Zone Requirements
Attachment D	Excerpt from Bedford Municipal Planning Strategy

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Luc Ouellet, LPP, Planner III, 902.490.3689

Report Approved by: Original Signed
Carl Purvis, Acting Manager, Current Planning, 902.490.4797



Map 1 - Generalized Future Land Use

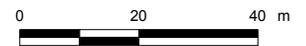
133 Duffus Drive,
Bedford

HALIFAX

 Area of Existing Development Agreement to be Discharged

Designation

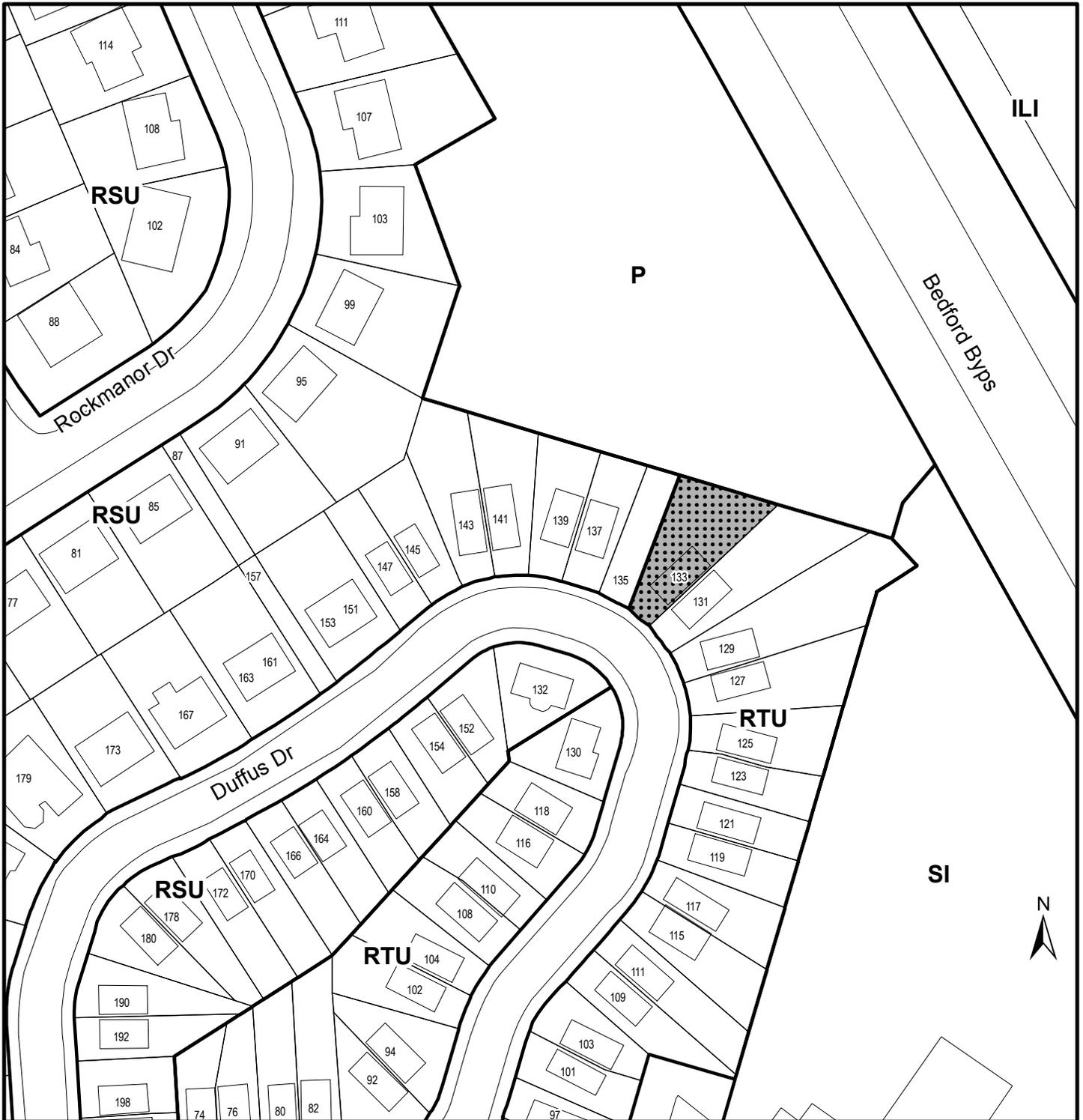
- R Residential
- P Park and Recreation
- IND Industrial
- I Institutional



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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

Bedford Plan Area



Map 2 - Zoning

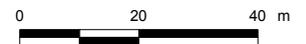
133 Duffus Drive,
Bedford

HALIFAX

 Area of Existing Development Agreement to be Discharged

Zone

- RSU Single Dwelling Unit
- RTU Two Dwelling Unit
- ILI Light Industrial
- SI Institutional
- P Park



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.

Bedford Plan Area

ATTACHMENT A

DISCHARGING AGREEMENT

THIS DISCHARGING AGREEMENT made this day of **[INSERT MONTH]**, 20__,

BETWEEN:

[INSERT INDIVIDUALS' NAMES]

individuals, in the Halifax Regional Municipality, in the Province of Nova Scotia (hereinafter collectively called the "Developer")

OF THE FIRST PART

and

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia (hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 133 Duffus Drive, Bedford and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Council of the Town of Bedford approved an application to enter into a Development Agreement to allow for the construction of various forms of low-density residential, which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 54243 in Book 4820, at Pages 935 to 945 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested that the Existing Agreement be discharged from the Lands;

AND WHEREAS, pursuant to the procedures and requirements contained in the *Halifax Regional Municipality Charter*, the North West Community Council of the Municipality approved this request by resolution at a meeting held on **[INSERT - date]**, referenced as Municipal Case Number 20702;

WITNESS that it is agreed that the Lands are hereby discharged from the Existing Agreement.

////////////////////////////////////

WITNESS that this Discharging Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Kevin Arjoon, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

Attachment B: Existing Development Agreement

935

✓ 54243 ✓

Lic. Amendment
B. 5200 P. 796

1

THIS AGREEMENT MADE THIS 25th DAY OF September, 1989

BETWEEN: REDDEN BROTHERS DEVELOPMENT LTD.

(hereinafter referred to as the "Developer")

- and -

THE TOWN OF BEDFORD, an incorporated Town, of the County of Halifax, Province of Nova Scotia.

(hereinafter referred to as "the Town")

WHEREAS, the Developer has requested that the Town enter into a Development Agreement, with the Developer, pursuant to sections 55 and 66 of The Planning Act of Nova Scotia, so that the Developer may use the property in a manner which is not presently provided for under the Land Use By-Law of the Town;

THEREFORE, in consideration of the benefits which flow to both parties as a result of the covenants contained herein, the parties hereto agree:

1. The development project (hereinafter referred to as "the Development") includes all components meeting the definition of "development" in the Planning Act, however the structures are briefly described as follows:
2. The Developer is the registered owner of, or has registerable ownership rights in the lands as described in Schedule "A" attached hereto (hereinafter referred to as "the lands").
3. The Developer shall construct the Development in conformance with site plans, conceptual plans, supporting technical documents and renderings of the overall development proposal, as submitted to the Council of the Town and as presented to the public at a public hearing held on the 13th day of February 1989, and subsequently filed with the Planning and Development Control Department of the Town, which documents and plans are attached hereto as Schedule "B" and are hereinafter referred to as "the Plans".

4. (1) The Developer shall not develop or use the lands for purposes other than those described in this Agreement.
 (2) The proposed use of the land which is allowed by this development agreement is the following:
- Construction of link homes on lots #1,9-14 and 30-34;
 - Construction of bungalows or split entries, with basement apartments, on lots 35 - 38 incl. and lots 40 - 50 incl.
 - The three single family dwellings existing on lots 40, 41 and 49 may be converted to two dwelling unit structures consistent with the intent of this Agreement.

And, for further clarification, does not include the following:

-Construction of more than two dwelling units on a lot

5. The decision of the Development Officer of the Town as to whether the Development is in conformance with the terms of this Agreement, or with the Plans, shall be conclusive.
6. (1) Any substantial amendment to either this Agreement or the Plans, shall be subject to the procedures provided for in Section 66 of the Planning Act.
 (2) Amendments which are not substantial are any amendments other than those affecting the following:
- Making structures of greater bulk and scale than was indicated at the public hearing.
7. Any amendment whether substantial or otherwise must be approved by both parties in writing.
8. (1) The detailed plans, including but not limited to construction plans, landscaping plans, engineering plans and any location certificates, shall conform with the Plans.
 (2) The decision of the Development Officer of the Town as to whether the detailed plans are in conformance with the Plans, and with the terms of this Agreement, shall be conclusive.
9. Construction on the site shall comply with all Federal and Provincial laws and all Town By-Laws, regulations and policies in effect in the Town, provided however, that construction on the site shall be exempted from the provisions

of the Town's Land Use By-Law only as particularly provided for in this Agreement, and any amendment therefore agreed in writing by the parties, and not otherwise.

10. All specific components of the Development, which could include but are not limited to access, parking, landscaping, screening and buffering, lighting and any other components listed in Schedule "C", shall conform to any requirements as described in Schedule "C" which is attached to this Agreement.
11. Any roads or walkway shall be constructed:
 - (a) in conformance with any specific requirements as shown on the Plans, and
 - (b) unless otherwise stated in section 23 of this Agreement, in conformance with Town standards and specifications for roads and walkways.
12. The Developer shall submit detailed engineering plans of the Development in all cases. When requested to do so by the Development Officer, those plans shall also include the following:
 - (a) The nature and extent of any tree clearing, land filling or land excavating to be undertaken prior to or during construction of the Development;
 - (b) The manner in which the drainage of storm water is to be altered from its existing flow pattern, and how it is to be managed or controlled;
 - (c) The nature of specific controls to prevent the discharge of soil or other sediments or effluent into any neighbouring watercourse during construction.
13. Any engineering plans required pursuant to clause 11 shall be subject to the approval of the Development Officer of the Town, acting on the advice of the Town's Director of Engineering and Works, and shall require approval, in writing, from the Development Officer of the Town before a Development Agreement is issued.

14. (1) The Developer shall maintain the Development and any portion thereof, (including preventative maintenance and repair) to the same standards that the Development and any portion thereof was constructed;
- (2) The Developer shall maintain in all respects, including keeping in good repair and keeping free of snow, any roads or walkways required to be constructed and not owned by the Town.
15. (1) All offsite Development costs directly related to the Development shall be the responsibility of the Developer; without limiting the generality of the foregoing, these costs include the costs of road construction or reconstruction and walkway construction as well as connecting to the trunk services such as water, sanitary and storm water systems;
- (2) Whether a particular offsite development cost is directly related to the Development shall be the decision of the Development Officer, and his decision shall be conclusive.
16. (1) In consideration of the sum of Ten Dollars (\$10.00) from the Town, the receipt and sufficiency of which is hereby acknowledged by the Developer, the Developer acknowledges and accepts it's obligations under clause 15 of this Agreement notwithstanding any provisions of the Planning Act;
- (2) The Developer confirms and agrees that the execution of this Development Agreement by the Town is not contingent upon the Developer agreeing to the provisions of clause 15 of this Agreement.
17. (1) The entering into of this Agreement was approved in principle by the Council of the Town at a duly held meeting of Council convened on the 13th day of March, 1989;
- (2) This Agreement shall not be entered into, or signed by both parties, until either the time of Appeal under section 71 of the Planning Act has elapsed or any appeals which have been lodged have been disposed of and the resolution of Council has been affirmed by the Nova Scotia Municipal Board;

(3) Neither a development permit nor building permit shall issue until this Agreement has been entered into by both parties.

18. This Agreement may be reviewed within five (5) years from the date of execution and at that time, the Town may:
 - (a) leave this Agreement as is;
 - (b) attempt to negotiate a new agreement;
 - (c) discharge this Agreement on the condition that the Developer's rights hereunder are preserved by accommodating this use in the Municipal Planning Strategy and Land Use By-Law of the Town.
19. If construction of the Development is not completed, in the opinion of the Development Officer, within five (5) years, the Town may:
 - (a) extend this Agreement;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement.
20. If, in the opinion of the Development Officer, construction of the Development has not commenced within twelve (12) months of the date of execution of this Agreement, this Agreement shall be null and void.
21. The Developer agrees to pay for all legal costs and expenses incurred by the Town that have originated from the application for this Development Agreement.
22. It is agreed that the provisions of this Development Agreement are severable from one another and that the invalidity of one provision shall not prejudice the validity or enforcement of any other provision.
23. Schedules A, B, and C, attached to this Agreement shall form part of this Agreement.
24. The Developer shall at all times indemnify and save harmless the Town from and against all claims demands, loss, costs, damages, actions, suits or other proceedings by whomever made, sustained, brought or prosecuted to the extent that the foregoing are based upon, occasioned by or attributable to anything done or omitted by the

Developer or his servants or his agents or employees in the fulfillment of any of its obligations under this agreement.

- 25. The following special provisions shall also apply to the Development:
 - For the dwellings on lots 35-38 incl. and lots 40 - 50, inclusive, a 12 foot side yard shall be maintained on one side and 4 foot side yard on the other side.
 - For dwellings on lots 35 - 38 incl. and lots 40 - 50 inclusive, the building footprint, inclusive of any garage, shall not exceed 1400 square feet.
 - For dwellings on lots 35 - 38 incl. and lots 40 - 50 inclusive, the rear yard of each lot shall not be varied beyond 10 percent of that shown on "the Plans".

- 26. The Developer shall convey to the Town, within sixty days of having been requested to do so in writing by the Development Officer of the Town, a good and marketable title to any road, walkway, parkland, recreational land or easement, as indicated in the Plans or as indicated elsewhere in this Agreement.

- 27. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns and shall run with the land which is the subject of this Agreement.

Province of Nova Scotia
County of Halifax

I hereby certify that the within instrument was recorded in the Registry of Deeds Office at Halifax in the County of Halifax, N. S., at 2:14 o'clock P.M., on the 4 day of Oct A.D., 1989 in Book No. 4800 at Pages 935-945 as Document Number 510110

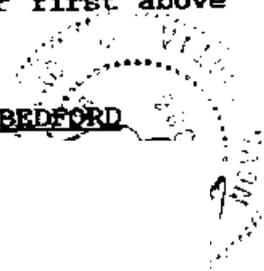
Original Signed

Registrar of Deeds for the Registration District of Halifax County

DATED at Bedford, Nova Scotia, the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

TOWN OF BEDFORD
Original Signed



Original Signed

WITNESS

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

REDDEN BROTHERS LIMITED

Original Signed

WITNESS

PER: Original Signed

[Signature]

PER:

SCHEDULE "A"
PROPERTY DESCRIPTION

ALL THOSE parcels of land situate on the northwesterly, northerly and southeasterly sides of Duffus Drive, in the Town of Bedford, Province of Nova Scotia, being a portion of "Oakridge Estates" as shown on a "Plan of Survey Showing Lots 1 to 14 Inclusive, 18 to 49 Inclusive, 50Z, 51, 52H, V and Lot A-1, Being a Subdivision of a Portion of Block GB and Parcel G-1, Lands of Redden Brothers Development Limited; Lands of William L. and Joanne G. Boylan; and Lot A, Lands of Vincent H. Lively", prepared by Wallace Macdonald & Lively, Ltd., signed by A.E. Wallace, N.S.L.S., dated January 15, 1988, and approved by the Town of Bedford January 19, 1988, said parcels being more particularly described as follows:

FIRSTLY, Lots 1, 9, 10, 11, 12, 13 and 14 situate on the southeasterly side of Duffus Drive, as shown on said Plan dated January 15, 1988.

SECONDLY, Lots 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50Z situate on the northwesterly and northerly sides of Duffus Drive, as shown on said Plan dated January 15, 1988.

SCHEDULE "B"

**SITE PLANS
CONCEPTUAL PLANS
TECHNICAL DOCUMENTS
RENDERINGS**

Schedule "B" may be viewed at
the Town of Bedford
Administrative Offices, Bedford N.S.

SCHEDULE "C"

(a) PARKING REQUIREMENTS

The provisions of the Land Use By-Law are to apply.

(b) LANDSCAPING REQUIREMENTS

A visual buffer is to be provided between lots 33-50 and the abutting lots on Rockmanor Drive. This visual buffer may consist of one, or a combination of two or all, of the following:

- retention of existing vegetation;
- placement of soil and vegetative cover on areas where the original vegetation has been removed;
- erection of a fence where it is not possible to place fill and plant vegetation.

AFFIDAVIT OF EXECUTION

PROVINCE OF NOVA SCOTIA, COUNTY OF HALIFAX

ON this 27th day of September, 1989, before me the subscriber, personally came and appeared JANE GRAY to the foregoing Indenture, who having been by me duly sworn, made oath and said that THE TOWN OF BEDFORD one of the parties hereto cause the same to be executed in its name and on its behalf and its corporate seal to be thereunder affixed in ~~his~~/her presence.

Original Signed
-----Barrister of Supreme
Court of Nova ScotiaWILLIAM A. McLELLAN
A Barrister of the Supreme Court
of Nova Scotia

ATTACHMENT C

RTU ZONE REQUIREMENTS

PART 7 RESIDENTIAL TWO DWELLING UNIT (RTU) ZONE

No development permit shall be issued in a Residential Two Dwelling Unit (RTU) Zone except for one or more of the following uses:

- a) all uses permitted in the RSU Zone subject to the RSU Zone requirements;
- b) a semi-detached dwelling;
- c) a duplex dwelling;
- d) a linked dwelling;
- e) a basement apartment added to a single dwelling unit so that the building contains only two dwelling units;
- f) special care facilities for up to 10 residents
- g) neighbourhood park;
- h) uses accessory to the foregoing uses.

ZONE REQUIREMENTS RTU

In any Residential Two Dwelling Unit (RTU) Zone, no development permit shall be issued except in conformity with the following requirements:

	<u>Duplex Dwellings & Singles with Basement Apartment</u>	<u>Each Semi-Detached Unit or Linked Dwelling Unit</u>
Minimum Lot Area	6,000 Sq.Ft.	3,000 Sq.Ft.
Minimum Lot Frontage	60 Ft.	30 Ft.
Minimum Front Yard	15 Ft. on Local and Collector Streets; 30 Ft. on Arterial	15 Ft. on Local and Collector Streets; 30 Ft. on Arterial
Minimum Rear Yard	20 Ft.	20 Ft.
Minimum Side Yard	8 Ft.	8 Ft.
Minimum Common Side Yard For Link Homes	N/A	2.5 Ft.
Minimum flankage yard	15 Ft. on Local and Collector Streets; 30 Ft. on Arterial	15 Ft. on Local and Collector 30 Ft. on Arterial
Maximum Height of Building	35 Ft.	35 Ft.
Maximum Number of Dwelling Units Per Lot	2	1
Maximum Lot Coverage	35%	35%

ATTACHMENT D

EXCERPT FROM BEDFORD MUNICIPAL PLANNING STRATEGY

Policy R-5:

It shall be the intention of Town Council to establish the following zones within the residential designation:

- Residential Single Unit Zone (RSU) which permits single detached dwellings and existing two unit dwellings
- Residential Two Unit Zone (RTU) which permits single detached and two unit dwellings be they linked homes, semi-detached dwellings, duplex dwellings, or single detached with basement apartment
- Residential Townhouse Zone (RTH) which permits townhouses
- Residential Multiple Dwelling Unit Zone (RMU) which permits multiple-unit buildings

These zones shall apply in the existing neighbourhoods which are identified by the Residential designation on the Generalized Future Land Use Map. Neighbourhood parks and special care facilities for up to 10 residents will also be permitted in these zones.