THIS DEVELOPMENT AGREEMENT made this 10th day of February, A.D., 2022

BETWEEN;

Lutz Properties Inc

(herein called the "Developer")

OF THE PART

- and -

The Town of Yarmouth; an incorporated Town

(herein called the "Town")

OF THE OTHER PART

WHEREAS the Developer has agreed to enter into this Agreement with the Town pursuant to Section 225 and Section 230 of the Municipal Government Act and Policy 4.18 (1) (a) of the Municipal Planning Strategy.

WHEREAS the Developer is under agreement to purchase certain lands and consolidate the two parcels through a subdivision before signing of the Development Agreement for the said lands (herein called the "Subject Property"), known as Lot LP-2 Clements Avenue, being PID number 90217712 more particularly described in Schedule "A" of this Agreement.

WHEREAS the Developer has made an application to the Town for a Development Agreement for the purpose of developing a multi-unit apartment building consisting of a total maximum of twenty-three (23) dwelling units (herein called the "Development"), which Development is more particularly described in Schedule "B" (Site Plan).

AND WHEREAS Statement of Community Interest Section 4, Infilling in Existing Residential Areas, Policy 4.10, and Policy 4.18 (1) (a) of the Town of Yarmouth Municipal Planning Strategy effective on the 23rd day of August 2016 A.D., and amendments thereto enables the Town to enter into an agreement for the development.

NOW THIS AGREEMENT WITNESSETH that in consideration of the sum of $100.00 now paid by the Developer to the Town, the receipt of which is hereby acknowledged, the parties hereto mutually covenant and agree to the development subject to the following terms and conditions.

1. Permitted Use:

1.1 That the Development on the Subject Property shall be limited to:

1.1.1 ~~One (1) multi-unit apartment building that includes a maximum of twenty-three (23) dwelling units, as generally shown in Schedule "B" (site plan).~~
Multiple unit buildings with more than eight (8) units subject to the applicable rules of this Agreement.

1.1.2 Those uses permitted in the underlying zoning by the Land Use By-law, as amended from time-to-time.

1.2 ~~Except otherwise stipulated in this Agreement, the development of the Subject Property shall comply with the requirements of the Town of Yarmouth Land Use By-law, as amended from time-to-time.~~
Except as otherwise set out in this Agreement, the development on the Subject Property shall be governed by the provisions of the Yarmouth Land Use By-law and any amendments thereto as approved on the 23rd day of August 2016, and in particular, the use shall otherwise comply with the requirements of the High Density Residential (R-3) Zone.

2. ~~Size and Location of Main Building:~~ Development Rules:

2.1 ~~The number of main buildings permitted on the Subject Property shall be limited to one (1) main building for residential dwelling use, as generally shown on Schedule "B" (site plan).~~ Number of Units
The maximum number of dwelling units of dwelling units on the Subject Property shall not exceed 75 units per hectare (30 units per acre).

2.2 ~~A maximum number of twenty-three (23) dwelling units for residential use~~

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~~shall be permitted in the main building, as generally shown in Schedule "B~~[11] ~~(site plan).~~ Building Height

a) Unless otherwise provided in subsection b), the maximum building height of any main building shall be 13.72 m (45 ft).

b) Any main building located within 12.19 m (40 ft) of the northern property line shall not exceed two (2) storeys and a height of 9.14m (30 ft).

c) The maximum building height for any accessory building shall be in accordance with applicable provisions of the Land Use Bylaw 2016.

2.3 ~~The main building shall not exceed a maximum height of 13.72 m (45 ft).~~ Yards

a) The minimum depth of all yards shall meet the minimum building setbacks required in subsection 2.4 of this Agreement.

2.4 ~~A minimum of 6.1 m (20 ft) setback shall be established between the main building and the surrounding property lines.~~ Setbacks

a) Unless otherwise provided in subsections b) & c), the minimum building setback from a property line is 6.1 m (20 ft).

b) A main building shall be no less than 7.6 m (25ft) away from the northern property line, and no less than 4.6m (15 ft) away from the southern property line.

c) For the purposes of subsection b), access, parking, accessory buildings and amenity spaces may be permitted within the required setback area.

2.4 ~~Once constructed, the main building may be renovated and maintained provided the overall height, bulk, scale, or lot coverage (footprint) does not increase. Renovations that decrease the height, bulk, scale, or lot coverage (footprint) may be permitted and once completed may be increased provided such increase does not exceed the height, bulk, scale, or lot coverage (footprint) of the existing main building as generally shown on Schedule "B" (site plan) of this Agreement~~. Setbacks

a) Unless otherwise provided in subsections b) & c), the minimum building setback from a property line is 6.1 m (20 ft).

b) A main building shall be no less than 7.6 m (25ft) away from the northern property line, and no less than 4.6m (15 ft) away from the southern property line.

c) For the purposes of subsection b), access, parking, accessory buildings and amenity spaces may be permitted within the required setback area.

2.5 ~~On the main building, open or roofed verandas, balconies, or decks are permitted to project to a maximum distance of 1.52 m (5 ft), including eaves and~~

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~~cornices, into required front, rear, and flanking yards.~~ Projections
Any open or covered/roofed verandas, balconies, and decks are permitted to project to a maximum distance of 1.82m (6 ft), including eaves and cornices, into required front, rear, and flanking yards.

2.6 Building Separation
Any open or covered/roofed verandas, balconies, and decks are permitted to project to a maximum distance of 1.82m (6 ft), including eaves and cornices, into required front, rear, and flanking yards.

2.7 Number of Main Buildings
Multiple main buildings may be permitted provided each building meet all applicable requirements of this Agreement.

3. ~~Landscaping and Buffering:~~ Landscaping and Amenity Space

3.1 ~~The Developer shall provide landscaping that Includes a mixture of vegetation Including trees, sod, and shrubs surrounding the Subject Property. The southeast corner abutting the parking lot of the Subject Property shall be covered with sod, as generally shown In Schedule "B" (site plan).~~ Landscaping

a) A minimum of 30 per cent of the Subject Property area shall be landscaped.
b) The landscaped area may consist of permeable and impervious landscaping.
c) Permeable landscaping may consist of any existing natural areas, or existing landscaped areas of the lot to be retained.
d) The maximum amount of impervious landscaping shall not exceed 50 per cent of the required landscaped area.
e) Any portion of Subject Property used for motor vehicle access, parking spaces and garbage and recycling facilities shall not be included in the calculation of a landscaped area.
f) A minimum of one (1) new deciduous or coniferous tree (native species only) per unit shall be included in the required landscaped area.

3.2 ~~Vegetation shall be used to provide a buffer and visual barrier with the adjacent lot along the North property line of the Subject Property.~~ Amenity Space

a) Each dwelling unit shall include an amenity space with no less than $5m^2$ ($54ft^2$) in size.
b) Amenity space may be provided as private amenity space or common amenity space or combination of both.

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c) Private amenity space shall be in the form of balcony, deck, or patio and have no minimum dimensions of less than 1.7m (6ft).
d) Common amenity space may be provided indoors or outdoors and shall:
    a. be accessible to all units; and
    b. have a contiguous area of no less than 50m2 (540ft2), with no dimension less than 6.1m (20ft).

3.3 Trees placed on the Subject Property shall Initially be at least 1.22 m (4 ft) In height when planted with the capability to grow up to a minimum height of 1.83 m (6 ft). Trees shall also be planted with a minimum spacing of at least 3.05 m (10ft) from the centre of the tree.

4. ~~Location of~~ Accessory Buildings:

4.1 A maximum of two (2) accessory buildings per main residential building may be developed, erected, or placed on the Subject Property, ~~as generally shown on Schedule "B" (site plan)~~ provided It conforms with the following requirements:

4.1.1 Shall not be used for human habitation;

4.1.2 Shall not be located in the front yard;

4.1.3 Shall be setback a minimum of 4.57 m (15 ft) from any public street;

4.1.4 Shall not be located closer than 0.61m (2 ft) to any side yard property line;

4.1.5 Shall not located closer than 0.61m (2 ft) to any rear yard property line;

4.1.6 Shall not exceed a height of 4.57 m (15 ft);

4.1.7 Shall not exceed a combined area of 185.8 m^2 (2000 ft^2) in gross floor area; and

4.1.8 Shall not be closer than 1.22 m (4 ft) from the main building or another accessory building.

5. Access, Parking and Lighting ~~and Egress from the Site - On-site Parking and Lighting~~:

5.1 ~~A total of at least thirty-six (36) on-site parking spaces shall be provided and maintained on the same lot with unobstructed access to Clements Avenue.~~

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Parking

a) The minimum number of on-site residential parking space is one (1) parking space per dwelling unit.
b) Each on-site parking space shall be no less than 2.44 m (8ft) wide by 6.1 (20ft) deep.
c) Unless otherwise provided in subsection d), on-site parking areas shall be demarcated and on a permanent hard surface.
d) Parking spaces on a permeable surface may be permitted at the discretion of the Town Engineer where the Developer can demonstrate tangible improvements to on-site stormwater management.
e) Accessible parking spaces shall meet the requirements of the National Building Code.
f) Where the minimum number of parking space cannot be provided, any combination of off-site parking and cash-in-lieu of on-site parking may be provided to the satisfaction of the Development Officer
g) Motor vehicle parking shall not be located within yards shared with public streets.
h) The Developer shall provide one or multiple outdoor bicycle parking racks for a minimum of seven (7) bikes on the Subject Property, which shall be placed on top of a permanent hard surface.

5.2 ~~Each parking space shall not be less than 2.44 m (8 ft) wide and 6.1 m (20 ft) long and be demarcated and maintained as such within the parking area. The Development shall include a minimum of 3 accessible parking stalls. Accessible parking stalls must be a minimum of 3.9 m (12.80 ft) wide and 7 m (22.97 ft) long, according to the Canadian Standards Association (CSA).~~ Access

a) Unless otherwise permitted by the Town Engineer, any onsite vehicular access shall comply with the applicable requirements the Land Use Bylaw 2016.
b) Unless otherwise permitted by the Town Engineer, any driveway on the Subject Property shall be a minimum of 6.1 m wide (20 ft).
c) Each main building shall be connected to a public sidewalk by a direct pedestrian access.

5.3 ~~If a minimum of thirty-three (33) on-site standard parking spaces cannot be provided, as generally shown in Schedule "B" (site plan), the Developer is required to pay cash-in-lieu of parking to the Town~~. Lighting

Any on-site lighting shall comply with applicable Town of Yarmouth Dark Sky polies and Land Use Bylaw 2016 requirements.

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~~5.4 The parking lot shall be built with a permanent hard surface and designed generally as shown in Schedule "B" (site plan) of this Agreement.~~

~~5.5 Parking shall not be located in flanking or front yards of the Subject Property.~~

~~5.6 Vehicle access shall be limited to one (1) driveway onto Clements Avenue, as generally shown In Schedule "B" (site plan).~~

~~5.7 The driveway shall be a minimum of 6.1 m wide (20 ft), and Its accesses in clause 5.6 shall not be altered In any significant fashion.~~

~~5.8 The Developer shall provide an outdoor bicycle parking rack for a minimum of 7 bikes on the East side of the main building, as generally shown in Schedule "B" (site plan) and be placed on top of a permanent hard surface.~~

~~5.9 The Developer shall construct a private walkway made of a permanent hard surface of at least 1.22 m (4 ft) wide that provides pedestrian access from the multi-use pathway fronting Clements Avenue to the main building, as generally shown in Schedule "B" (site plan).~~

~~5.10 Any lights used to illuminate the building, driveway, or parking area shall be so arranged as to divert the light away from the streets, adjacent lots, and buildings.~~

6. **Signage:**

6.1 All signage shall comply with the requirements of the Town of Yarmouth Land Use By-law, as amended from time to time.

7. Outdoor Storage or Display:

7.1 No open storage or outdoor display uses shall be permitted on the Subject Property ~~as identified in Schedule "B" (site plan) of this Agreement~~.

7.2 Any garbage, compost, and/or recycling containers or similar devices shall be managed in accordance with the Town of Yarmouth's Solid Waste Resource Bylaw, as amended from time-to-time.

7.3 Any garbage, compost, and/or recycling containers or similar devices shall be located within either an accessory building or a wooden fenced-In area of at least 1.83 m (6 ft.) In height. A wooden fenced-In structure containing any garbage, compost, and/or recycling containers or similar devices shall not be located in the front or flanking yards of the Subject Property. The wooden fencing shall be constructed such that the boards or slats are close enough together that one cannot see through the fence

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and view the garbage, compost, and/or recycling containers or similar devices. The wooden fenced-in structure can be three-sided provided the open side faces away from a public street.

7.4 Commercial containers shall not be less than 1.5 m (4.92 ft) from the main building or surrounding property lines.

~~7.5 The accessory building or wooden fenced-in areas for waste containers, as described in Section 7.3, shall be adjacent to an on-site driveway.~~

8. Storm Drainage and Surface Run-off:

8.1 Storm water and surface water controls shall be subject to the approval of the Town's Engineer. Correspondence from the Town Engineer shall be filed with the development officer prior to the issuance of a municipal development permit.

~~**9. Subdivision of Land:**~~

~~9.1 The Developer shall first consolidate the Subject Property through Subdivision that satisfies the requirements of the Town's Subdivision By-law prior to commencing development.~~

10. Home Based Businesses: Non-Residential Uses:

10.1 Home based businesses and non-residential uses shall not be permitted in the residential dwelling units, with exception to home-based offices.

11. Operation and Maintenance:

11.1 All buildings and lands shall be maintained and kept in a tidy and safe condition.

11.2 The Developer shall be responsible for maintaining the site to comply with all Town By-laws and Provincial regulations and to ensure that garbage collection and debris collection and removal is conducted on a regular basis to ensure the site is maintained in a safe and clean condition.

~~11.3 The Developer shall Implement and maintain the Landscaping and Buffering areas, as stated in Section 3 of this Agreement, that surrounds the Subject Property once the development is occupied.~~

12. Signing of the Development Agreement:

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12.1 This agreement shall be signed by the Developer within 36 months from the date the appeal period pursuant to Section 228 of the Municipal Government Act has elapsed and no appeal has been commenced, otherwise this agreement shall be considered null and void and shall not be Implemented.

13. Timing:

13.1 The Developer ~~shall~~ may apply for the necessary building and development permits for the Development within ~~one (1)~~ three (3) years of entering into this Agreement. The Development shall include ~~the completion of~~ the following components:

13.1.1 ~~The~~ One of more of the main building~~, generally as shown in Schedule "B" (site plan)~~;

13.1.2 The parking spaces in compliance with the applicable ~~lot, as generally shown In Schedule "B" (site plan), In which shall include the On-site Parking~~ requirements as written In Section 5 of this Agreement;

13.1.3 ~~The driveway, as generally shown in Schedule "B" (site plan), in which shall Include the~~ Site access and on-site vehicular and pedestrian circulation in compliance with the applicable requirements as written in Section 5 of this Agreement;

13.1.4 Garbage, compost, and/or recycling containers or similar devices placed inside the structure that shall include the requirement the requirements as written in Section 7 of this Agreement. ~~The pedestrian pathway into the main building, as generally shown on Schedule "B" (site plan), which shall Include the requirements as written in Section S of this Agreement; and~~

~~13.1.5 The accessory buildings, as generally shown in Schedule "B" (site plan), which shall include the requirements as written In Section 4 of this Agreement;~~

~~13.1.6 The wooden fenced-in structure with any garbage, compost, and/or recycling containers or similar devices placed inside the structure that shall include the requirements as written in Section 7 of this Agreement and as generally shown in Schedule "B" (site plan).~~

13.2 This Agreement shall become void should no development and building permit be submitted for the Development within three (3) years of the date the Developer enters into this Agreement.

14. Amendments to the Agreement:

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14.1 Amendments considered non-substantive in this Agreement include the following:

14.1.1 Changes to extend time limits identified in Section 13 of this Agreement, by a period to be decided by Council;

14.1.2 Changes to the site plan or the clauses for issues regarding to Section 5 of this Agreement;

14.1.3 Changes to the clauses regarding the requirements for landscaping and buffering, as identified in Section 3 of this Agreement;

14.1.4 Changes to the site plan that are necessary to properly design and manage stormwater that are subject to the Town Engineer for approval, as identified in Section 8 of this Agreement;

14.1.5 Changes to the site plan that are required to comply with any By-Law, building code requirements, or provincial regulations;

14.1.6 Changes to the site plan or clauses regarding the location and construction of accessory structures, as identified in Section 4 of this Agreement;

14.1.7 Matters dealing with signage;

14.1.8 Changes to the site plan that are necessary to accommodate features that are subject to approval or authorization by other authorities, such as, but not limited to, the Nova Scotia Department of Transportation and Infrastructure Renewal and the Nova Scotia Department of the Environment and Labour.

14.2 All other matters shall be considered substantial and be amended only after a Public Hearing process pursuant to Section 230 of the Municipal Government Act.

15. Matters Incidental to the Agreement:

15.1 The Developer hereby agrees that any officer appointed by the Town 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 to allow an officer of the Town to inspect the Interior of any building located on the lands during any reasonable hour upon receiving notification, verbal or otherwise.

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15.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Town has given them thirty (30) days written notice of the failure or default, then In each such case:

15.2.1 The Town 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 submits to the jurisdiction of such Court and waives and defense based on the allegation that damages would be an adequate remedy;

15.2.2 The Town may enter onto the Subject Property and perform any of the covenants contained In this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Subject Property and be shown on any tax certificate Issued under the Assessment Act;

15.2.3 The Town may be 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

15.2.4 In addition to the above remedies the Town reserves the right to pursue any other remediation under the Municipal Government Act or Common Law In order to ensure compliance with this Agreement.

16. Land Use By-law Provisions:

16.1 Any provisions or regulations not set out or specifically mentioned in this Agreement shall be governed by the provisions of the Yarmouth Land Use By-law and any amendments thereto as approved on the 23rd day of August 2016, and in particular, the use shall otherwise comply with the requirements of the High Density Residential (R-3) Zone.

17. Compliance with Other Provisions and Statutes:

17.1 Where any provisions of this Development Agreement conflicts with those of any other Municipal or Provincial requirements, the higher or more stringent regulations shall prevail.

18. Registry of Deeds:

18.1 This Agreement shall be recorded and filed by the Town to the Land Registry Office located at 81 Logan Road, Bridgewater, Nova Scotia, B4V 3J8.

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19. Costs Associated with the Agreement:

19.1 The Developer shall be responsible for all costs associated with this Agreement including the cost of recording and filing all the documents in connection with this Agreement.

20. Enforcement:

20.1 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any provisions.

21. Binding:

21.1 This Agreement shall run with the land and be binding upon the Developer, its assigns, mortgages, lessees, successors, and occupiers of the property from time to time.

22. Requirements Prior to Approval:

22.1 Unless otherwise permitted by the Town, concurrently with the submission of a Development Permit application for the Development, the following information shall be prepared and submitted by qualified professionals for review and acceptance by the Town:

a) Unless otherwise permitted by the Town Engineer, any onsite vehicular access shall comply with the applicable requirements the Land Use Bylaw 2016.
b) a dimensioned site plan;
c) analysis of pre and post development demands and requirements for sanitary sewer, domestic water, firewater (if separate from domestic); and
d) a lighting plan to demonstrate compliance with the Town of Yarmouth Dark Sky requirements;
e) a Site Grading Plan;
f) a Stormwater Plan/Surface Runoff Plan; and
g) Erosion and Sediment Control Measures.

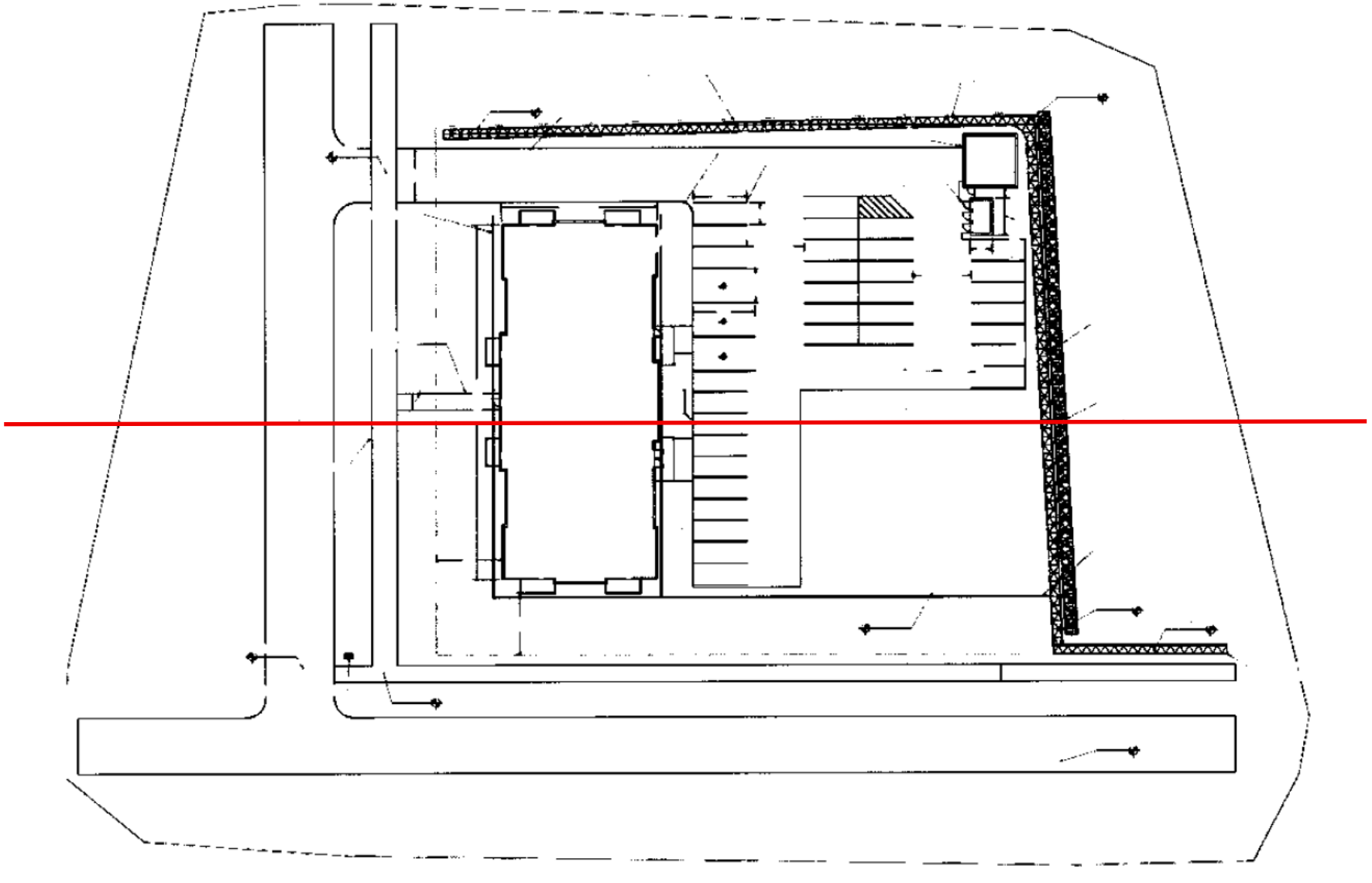
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Schedule “A” – Description of Subject Property

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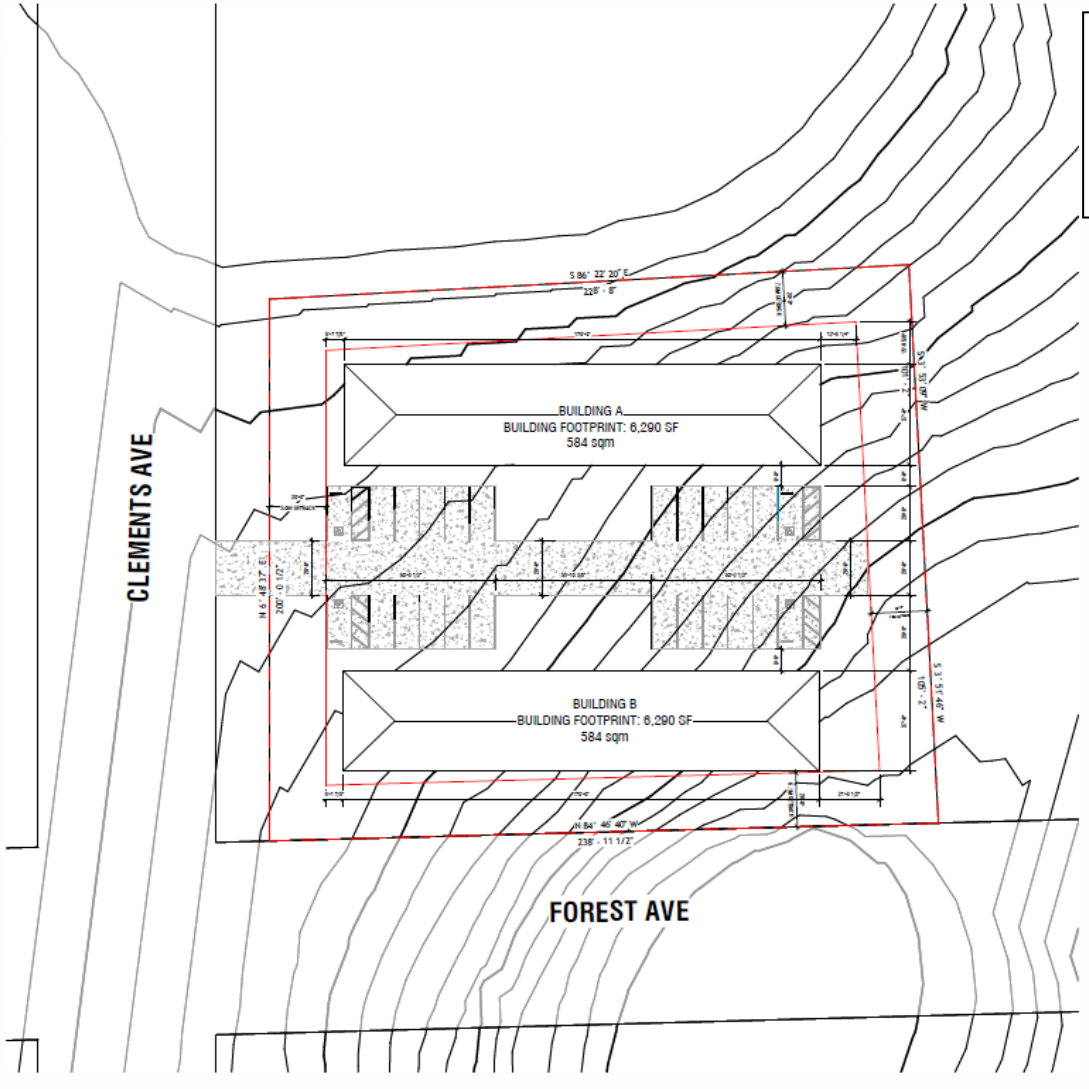
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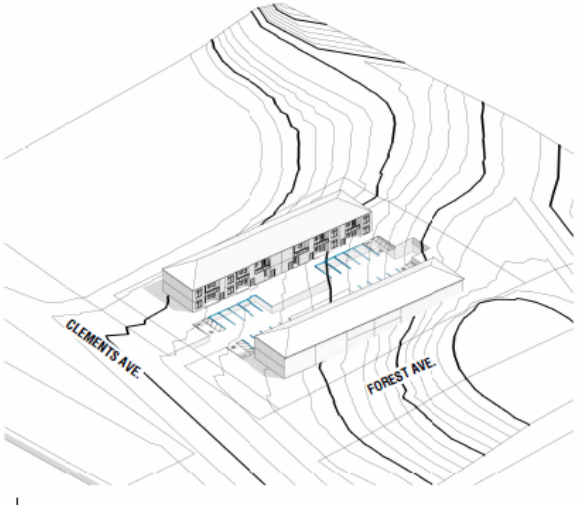
Schedule "B" – Conceptual Site Plan



NOTE* Schedule "B" is a conceptual plan that demonstrates a potential development outcome based on the development agreement requirements and shall not be interpreted as a reference for determining consistency of the actual development on the property with this development agreement.

SITE INFORMATION - R3 ZONE - YARMOUTH DIGBY LUB	
LOT COVERAGE COMPUTATION	
DESCRIPTION	AREA
TYPICAL UNIT 1-BR AREA	831.38 SF
TYPICAL UNIT 2-BR AREA	831.38 SF
BLDG. A	12,070 ft²
BLDG. B	12,070 ft²
BUILDING FOOTPRINT	24,140 ft²





1 SD100 PROPOSED SITE DEVELOPMENT
SCALE: 1" = 20'-0"

2 SD100 3D MASSING
SCALE: