Form 26

Purpose: to record an interest in a parcel; or
to record a power of attorney in the power of attorney roll

Registration district: YARMOUTH

Submitter's user number: 2383

Submitter's name: GREGORY D. BARRO, QC

For Office Use

YARMOUTH COUNTY LAND REGISTRATION OFFICE
I certify that this document was registered or recorded as shown here.
Rebecca Bond, Registrar

120248787 LR☑ ROD☐
Document #

MAR 10 2022 1041
MM DD YYYY Time

In the matter of Parcel Identification Number (PID)

PID	90217712
PID	

(*Expand box for additional PIDs*, ***maximum 9 PIDs per form***.)

Power of attorney *(Note: completion of this section is mandatory)*

☐ The attached document is signed by attorney for a person under a power of attorney, and the power of attorney is:
- ☐ recorded in the attorney roll
- ☐ recorded in the parcel register
- ☐ incorporated in the document

OR

☑ No power of attorney applies to this document

This form is submitted to record the attached document *(select applicable box):*

☑ in the parcel register as a recorded interest
☐ in the power of attorney roll
☐ in the power of attorney roll as a duplication of a power of attorney registered under the *Registry Act*

The following information relates to the interest being recorded:

Instrument type	DEVELOPMENT AGREEMENT
Expiry date *(if applicable)*	N/A
Interest holder and type to be added *(if applicable)* *Note: include qualifier (e.g., estate of, executor, trustee, personal representative) if applicable*	TOWN OF YARMOUTH - PARTY TO AGREEMENT
Mailing address of interest holder to be added *(for power of attorney, provide mailing address for donee)*	400 MAIN ST., YARMOUTH NS B5A 1G2
Name and mailing address power of attorney donor to be added *(if applicable)*	N/A
Name and mailing address power of attorney donee to be added *(if applicable)*	N/A

Reference to related instrument in names-based roll/parcel register *(if applicable) (for power of attorney to be duplicated, insert document/instrument number/year; include book/page if applicable)*	N/A

The textual qualifications in the above-noted parcel register(s) are to be changed as follows:

Textual qualification on title to be removed *(insert any existing textual description being changed, added to or altered in any way)*	
Textual qualification on title to be added *(insert replacement textual qualification)*	

Certificate of Legal Effect:

I certify that, in my professional opinion, it is appropriate to make the changes to the parcel register(s) as instructed on this form.

Dated at YARMOUTH, in the County of YARMOUTH, Province of Nova Scotia, FEBRUARY 28, 2022.

Signature of authorized lawyer

Name: GREGORY D. BARRO, QC

Address: 396 Main St., Yarmouth NS B5A 1E0

Phone: 902-742-9224

E-mail: gbarro@pinkstarbarro.com

Fax: 902-742-9383

☐ This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

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).

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.

2. Size and Location of Main Building:

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).

2.2 A maximum number of twenty-three (23) dwelling units for residential use shall be permitted in the main building, as generally shown in Schedule "B" (site plan).

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

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

2.5 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.

2.6 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 cornices, into required front, rear, and flanking yards.

3. <u>Landscaping and Buffering:</u>

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).

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.

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 (10 ft) from the centre of the tree.

4. <u>Location of Accessory Buildings:</u>

4.1 A maximum of two (2) accessory buildings 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 0.61 m (2 ft) to any side yard property line;

4.1.5 Shall not located closer than 0.61 m (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. <u>Access and Egress from the Site – On-site Parking and Lighting:</u>

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.

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).

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.

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 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.

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 to maintain 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. <u>Signing of the Development Agreement:</u>

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. <u>Timing:</u>

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

13.1.1 The main building, generally as shown in Schedule "B" (site plan);

13.1.2 The parking 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 requirements as written in Section 5 of this Agreement;

13.1.4 The pedestrian pathway into the main building, as generally shown in Schedule "B" (site plan), which shall include the requirements as written in Section 5 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).

14. Amendments to the Agreement:

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.

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.

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.

SIGNED, SEALED, AND DELIVERED
In the Presence of:

Witness

Witness

Witness

Developer

Lutz Properties Inc.

Scott Lutz

The Town of Yarmouth

per: _____
Mayor

per: _____
Town Clerk & Treasurer

PROVINCE OF NOVA SCOTIA

COUNTY OF YARMOUTH

ON THIS 10th day of February, A.D., 2021, before me, the subscriber personally came and appeared, Tracey Colquhoun, a subscribing witness to the foregoing indenture, who, having been by me duly sworn, made an oath and said that **Scott Lutz**, one of the parties thereto, caused the same to be executed in its name and on the behalf and its corporate seal to be thereunto affixed by the hands of its proper officers in his presence.

JUDY DURKEE
A Commissioner of the
Supreme Court of Nova Scotia

Judy Durkee

Commissioner of the Supreme

Court of Nova Scotia

ON THIS 9th day of February, A.D., 2021, before me, the subscriber personally came and appeared, Natalie Smith, a subscribing witness to the foregoing indenture, who, having been by me duly sworn, made an oath and said that the **Town of Yarmouth**, one of the parties thereto, caused the same to be executed in its name and on the behalf and its corporate seal to be thereunto affixed by the hands of its proper officers in his presence.

Judy Durkee

Commissioner of the Supreme

Court of Nova Scotia

JUDY DURKEE
A Commissioner of the
Supreme Court of Nova Scotia

SCHEDULE "A"

Parcel Description

Registration County: YARMOUTH COUNTY
Street/Place Name: CLEMENTS AVENUE /YARMOUTH
Title of Plan: FINAL PLAN OF S/D OF LOT LP-2 CONSOLIDATION OF LANDS OF LUTZ PROPERTIES INC. [PID #90217712 & PID #90217720] LOCATED AT CLEMENTS AVE & FOREST ST, TOWN OF YARMOUTH
Designation of Parcel on Plan: LOT LP-2
Registration Number of Plan: 119690080
Registration Date of Plan: 2021-11-24 13:37:46

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act
Registration District: YARMOUTH COUNTY
Registration Year: 2021
Plan or Document Number: 119690080

Schedule "B" - Site Plan:

