

DEVELOPMENT AGREEMENT

TO PERMIT A DRIVE-THROUGH, PID No. 90087388

THIS AGREEMENT MADE THIS 21 DAY OF JULY 2024

August

ASM

BETWEEN:

H. POTHIER REALTY LTD., a body corporate, of Tusket, Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

THE MUNICIPALITY OF THE DISTRICT OF ARGYLE, a body corporate
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer has good title to lands situated on 4134 Highway 308, Tusket, Nova Scotia and identified as PID numbers PIDs 90087388, and which said lands (hereinafter called the "Property") is more particularly described in Schedule "A" of this Agreement;

AND WHEREAS pursuant to Policy 4.5.9 and 4.5.11 of the Municipality of the District of Argyle's Municipal Planning Strategy the Developer have requested that a development agreement be entered into to permit the Property to be used for a Drive-Through, hereinafter called the "Development".

AND WHEREAS the Municipality, by a resolution of Council passed on the 25th day of JULY 2024 approved this Development Agreement to permit the Development of a Drive-Through, accessory to a Restaurant in conjunction with as-of-right permitted uses (automotive service station, retail store, and restaurant).

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the granting by the Municipality of the Development Agreement requested by the Developer, the Developer and the Municipality agree as follows:

PART 1: DEFINITIONS

For the Purpose of this Agreement, all other words shall carry their customary meaning except those defined under PART 26 - Definitions in the Municipality of the District of Argyle's Land Use By-law, as amended from time to time. Words not defined in the Land Use By-law but used herein are:

- a) *Pump Island* means the elevated concrete platform on which fuel pump(s) are located. A maximum of two (2) fuel pumps are permitted per pump island.
- b) *Stacking Lane* means an on-site queuing lane designated for motor vehicles and waiting for drive-through service and which is separated from other vehicular traffic and pedestrian circulation by barriers or markings that are clearly identifiable.
- c) *Pedestrian Walkway* means a pathway, which may include stairs, made of a stable surface and which is kept clear of debris, snow, and ice to facilitate the safe and orderly movement of pedestrians.
- d) *EV Charging Station* means the infrastructure used for the purpose of charging Electric Vehicles.
- e) *Gas Bar* means the area of the development used for the express purpose of refuelling vehicles and is considered an integral part of the Automotive Service Station use.
- f) *Gas Bar Canopy* means the structure that provides cover over the Gas Bar and associated infrastructure for the purposes of shielding customers and employees from inclement weather.

PART 2: GENERAL REQUIREMENTS

- 2.1 Except as otherwise stipulated by this Agreement, the development of the Property shall comply with the requirements of the Municipality of the District of Argyle's Land Use By-law, as may be amended.
- 2.2 Subject to the provisions of this Agreement, the Developer shall be bound by all by-laws and regulations of the Municipality as well as by any applicable provincial and federal statutes and regulations.
- 2.3 Notwithstanding Section 2.2, where the provisions of this Agreement conflict with those of any provincial or federal regulations, bylaws or codes, the more stringent requirements shall apply.
- 2.4 The Developer shall assume full responsibility for meeting all obligations and financial liabilities required to meet all federal, provincial, or municipal regulations, by-laws or codes in force at the present time, or any time in the future.
- 2.5 The Developer shall ensure that any structure permitted by this Agreement meets the requirements of the National Fire Code and the National Building Code at the time of construction.
- 2.6 The Schedules to this Agreement form part of this Agreement and are binding upon the Developer. Where a provision of a Schedule conflicts with the body of this Agreement, the body of this Agreement shall prevail.

PART 3: DEVELOPMENT OF THE PROPERTY

3.1 Land Use

- 3.1.1 Only the following uses shall be permitted on the Property:
 - a) all uses permitted in the underlying zoning, as per the requirements of the Municipality of the District of Argyle Land Use By-law, as amended from time to time, in addition to any

other uses permitted by this Agreement;

- b) A drive-through facility that is accessory to a Restaurant.
- c) A maximum of four (4) pump islands.
- d) accessory structures, and parking or loading areas accessory to the principal use as per the requirements of the Municipality of the District of Argyle Land Use By-law, as amended from time to time.

3.1.2 The Developer shall ensure that:

- a) the Development shall not generate emissions such as noise, dust, radiation, odors, liquids, or light to the air, water, or ground so as to create a recognized health or safety hazard or create a nuisance to the adjacent properties.

3.2 Building and Site Requirements

3.2.1 Servicing

The Developer shall:

- a) Be responsible for providing adequate water services and wastewater disposal services to the standards of the authority having jurisdiction.
- b) These services shall be installed, provided, and maintained at the expense of the Developer to the extent of their property boundary

3.2.2 Parking and Loading Areas

- a) The parking and loading areas shall be surfaced with asphalt, gravel, or similar hard surface materials.
- b) The Developer shall be responsible for supplying, installing, and maintaining at the Developers' cost, directional and regulatory signage on the Property as required by the Traffic Authority.
- c) The location of the structures on the Property, including the Gas Bar Canopy, shall not interfere with the full and efficient use of the parking area.
- d) Parking spaces shall be developed in accordance with the Parking and Loading Standards contained within the Land Use By-law, as may be amended from time to time.
- e) The minimum number of parking spaces shall conform with those listed within the Parking and Loading Standards contained within the Land Use By-law, as may be amended from time to time.
- f) A gas bar shall provide a minimum of one (1) parking space per fuel pump nozzle.
- g) An EV Charging Station shall provide a minimum of one (1) parking space per charging station.

3.2.3 Traffic and Vehicle Access

Any proposed change to the existing driveway access is subject to approval by the Nova Scotia Department of Public Works. The Developer shall also ensure that:

- a) A minimum of two (2) commercial grade vehicular access points shall be installed with access to/from Highway 308
- b) All commercial and customer vehicular and pedestrian traffic shall be through the entrances and exits along Highway 308, as approved by the Nova Scotia Department of Public Works
- c) A Pedestrian Walkway, with a minimum width of three (3) feet shall be provided along the front and south facing side wall of the Restaurant/Retail Store as generally indicated on Schedule B - Site Plan.

3.2.4 Outdoor Lighting

- a) All outdoor lighting shall be installed to reflect light away from adjacent properties.
- b) Outdoor lighting fixtures shall be full cut-off fixtures, not emitting any light above the horizontal plane drawn through the bottom of the light fixture.
- c) Outside illumination fixtures shall use a maximum colour temperature of 2700 kelvin.
- d) Outdoor illumination fixtures shall have an automated timer and/or motion sensor to prevent the unnecessary transmission of light during the night-time when a premises is not in use. The total installed initial luminaire lumens of all outdoor lighting shall not exceed 250,000 Lumens.

3.3 Operation and Maintenance of Property

- a) all structures shall be maintained in good repair and in a tidy and usable state;
- b) any refuse, composting, or recycling container shall be screened from public view and not situated within six (6) metres of any residential property abutting the development.
- c) the Developer shall keep the Property free from litter and debris and shall provide litter (and recycling if provided) receptacles in appropriate and easily accessible locations and service, maintain, and empty the receptacles as required.

3.4 Development Permit

- 3.4.1 The development described in this Agreement shall not be approved until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required. In addition, the Development Officer shall not issue a development permit until:
- a) Nova Scotia Department of Transportation and Active Transit has granted positive recommendation on all transportation issues within their responsibility and has given their approval, if any is required.
 - b) Payment for all required permit fees, registration of the document at the Registry of Deeds, and costs associated with advertising and processing the application have been received by the Municipality.

3.5 Accessory Structures

- 3.5.1 The Developer shall ensure that:
- a) The area identified on Schedule B - Site Plan for the storage of refuse generated by the development shall be screened by an opaque fence with a minimum height of six (6) feet or wholly enclosed within an accessory building.
 - b) All other forms of outdoor storage shall be prohibited on the Property.

PART 5: AMENDMENTS

- 5.1 Any amendment to this Agreement, whether substantive or otherwise, must be approved by both parties in writing.
- 5.2 The following shall be considered not substantive matters:
- a) the addition, removal or relocation of accessory buildings or structures;
 - b) matters dealing with time limits noted in Part 7 of this Agreement;

- c) changes to the permitted use of the property 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 Public Works and Nova Scotia Environment.
 - d) Discharge of this Agreement by Council at the request of the Developer.
- 5.3 Any amendment to a not substantive matter listed in 5.2 of this Part may be approved by Council without a public hearing.
- 5.4 Substantial matters shall relate to any matter not identified in 5.2 of this Part. Changes to substantial matters require amendment of this Agreement in accordance with the process in the Municipal Government Act.

PART 6: IMPLEMENTATION

- 6.1 Upon breach by the Developer of any of the terms or conditions of this Agreement, the Municipality may, after thirty (30) days notice in writing to the Developer of the breach, enter the Property and perform any of the terms and conditions of this Agreement. It is agreed that all reasonable expenses arising out of the entry or the performance of the terms and conditions may be recovered from the Developer by direct suit and shall form a charge on the Property.
- 6.2 This Agreement shall be binding upon the Developer' assigns, mortgagees, lessees, successors and occupiers of the Property.
- 6.3 The Developer hereby certifies that it is the sole owner of the Property.
- 6.4 The Developer further certifies that it has not disposed of any interest in the Property and there are no judgements, mortgages or other liens or encumbrances affecting the Property in addition to those described in this Agreement.
- 6.5 This Agreement shall be filed by the Municipality in the Land Registration Office at Bridgewater, Nova Scotia and shall form a charge or encumbrance upon the Property as described in Schedule A attached hereto.
- 6.6 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 other provisions.
- 6.7 The Developer shall at all times indemnify and save harmless the Municipality from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomever made, 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 his employees in the fulfillment of any of his obligations under this Agreement.
- 6.8 Upon completion of the Development, or after three (3) years from the date of approval of this Agreement, 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; or
 - b) discharge the Agreement on the condition that for those portions of the development that are deemed complete by the Council, the Developer's rights hereunder are preserved and Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law.

PART 7: TIMING

- 7.1 The Property Owner shall sign this Agreement within 90 days from the date the appeal

period lapses or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Nova Scotia Utility and Review Board.

- 7.2 The Developer shall apply for any required development permits for the proposed drive through and any use permitted as-of-right in the underlying zone(s) within two years of entering into this Agreement.
- 7.3 If the Developer fails to conform to any of these specified time limits, or breaches any other term of this Agreement, this Agreement may be discharged by Council, with or without the concurrence of the property owner, and the lands will become subject to the Municipal Planning Strategy and Land Use By-law.
- 7.4 The Municipality may consider an extension to any of the time limits specified in this part and may, by Resolution of Council, extend any of the time limits specified in this part.

SCHEDULES

- A Legal description of property
- B Site Plan

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first above written.

SIGNED, SEALED & DELIVERED

in the presence of:

_____)
 Witness)

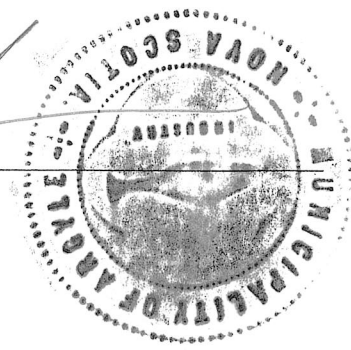
DEVELOPER

_____)
 Hubert Pothier)
 H. Pothier Realty Ltd.)

THE MUNICIPALITY OF THE DISTRICT OF ARGYLE

_____)
 Witness)

_____)
 Municipal Clerk)



PROVINCE OF NOVA SCOTIA
COUNTY OF YARMOUTH

On this 11th day of October XXXXXXXX 2024, before me, the subscriber, personally came and appeared Hubert Pothier, a subscribing witness to the foregoing agreement, who having been by me duly sworn, made oath and said that the developer, one of the parties thereto, caused the same to be executed in their name in his/her presence.

Development Agreement
Municipality of the District of Argyle and H. Pothier Realty Ltd.
July 2024

PROVINCE OF NOVA SCOTIA
COUNTY OF YARMOUTH

On this 21st day of August XXXXXX 2024, before me, the subscriber, personally came and appeared Rene Jeddry, a subscribing witness to the foregoing agreement who having been by me duly sworn, made oath and said that the Municipality of the District of Argyle, a Municipal Body Corporate, duly affixed its Corporate Seal and executed by Mr. Alain Muise, its Chief Administrative Officer, its proper officers duly authorized in that behalf in his/her presence.

A Barrister of the Supreme Court of Nova Scotia

JOCELIN P. D'ENTREMONT

A Barrister of the
Supreme Court of Nova Scotia

A Barrister of the Supreme Court of Nova Scotia

JOCELIN P. D'ENTREMONT

A Barrister of the
Supreme Court of Nova Scotia

SCHEDULE A—LEGAL DESCRIPTION OF PROPERTY

Description of PID 90087388, taken from Property Online (January 24, 2024)

Parcel Description

All that certain lot, piece or parcel of land and premises situate, lying and being at Tusket aforesaid, being and intended to be Lot 4 on the Instrument of Subdivision of the lands of Key Holdings Ltd. registered December 27, 2023 as Document 123541659 and bounded and described as follows:

Beginning at a point on the Eastern side of the Main Public Road leading from Tusket to Gavelton, at the Northwestern corner of land now or formerly of Kelsey Lynne Fisheries Ltd.;

Thence running Northwardly by said main Public Road 169.76 feet to a point;

Thence continuing Northwardly by the said main Public Road 171 feet, plus or minus to a point;

Thence Southeastwardly 246.43 feet, plus or minus, by land now or formerly of J. Gordon Wood and Hubert J. Pothier to a point;

Thence Eastwardly 1292.25 feet, plus or minus, by said land now or formerly of J. Gordon Wood and Hubert J. Pothier to a point;

Thence Southwardly 183.85 feet along the lands of Phyllis M. and Hubert J. Pothier and the lands of the NS Department of Natural Resources to a point;

Thence running Westwardly 1044.85 feet by said lands now or formerly of Kelsey Lynne Fisheries Ltd. to a point;

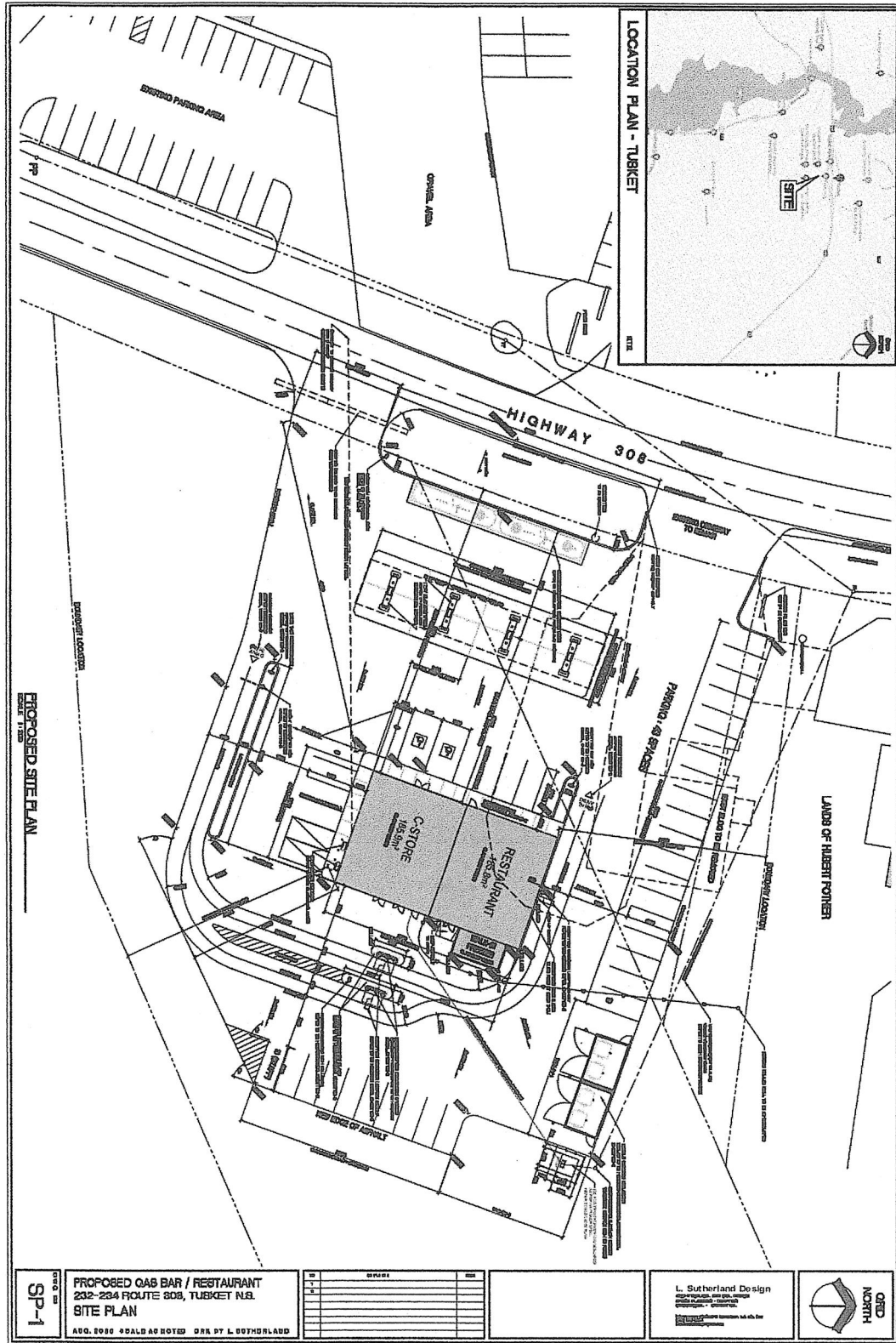
Thence running Southwardly 25 feet by said lands now or formerly of Kelsey Lynne Fisheries Ltd. to a point;

Thence running Westwardly 200.00 feet by said lands now or formerly of Kelsey Lynne Fisheries Ltd. to a point;

Thence running Westwardly 233.71 feet by said lands now or formerly of Kelsey Lynne Fisheries Ltd. to the place of beginning.

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

SCHEDULE B-SITE PLAN



PROPOSED SITE PLAN
DATE: 11/2023

SP-1

PROPOSED Q&B BAR / RESTAURANT
232-234 ROUTE 308, TUBKET N.S.
SITE PLAN
AUG. 2023 #2ALD AS NOTED DRA BY L. SUTHERLAND

NO	DESCRIPTION	DATE
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L. Sutherland Design
ARCHITECTS, INC. 2000
1000 BROADVIEW AVENUE
DARTMOUTH, NS B3A 2K6
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