

DEVELOPMENT AGREEMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.24

Parcel Identifiers
of Parcels Burdened
by Agreement:

00065227

(PID to be retired pending lot subdivision)

Owner of Land Parcel:

PENDING CORPORATE REGISTRATION

Andrew Dunn
871 South Barnaby Road
Barnaby River, NB
E1N 6G2 (Hereinafter called the "Developer")

Agreement with:

Rothesay

70 Hampton Road
Rothesay, NB
E2E 5L5 (Hereinafter called the "Town")

a body corporate under and by virtue of the
Municipalities Act, RSNB 1973, Chapter M-22,
located in the County of Kings and Province of New
Brunswick

WHEREAS the Developer is the registered owner of certain lands located at **## Millennium Drive (PID 00065227)** and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer is now desirous of entering into a development agreement to allow for the development of a multi-unit apartment building on the Lands as described in Schedule A.

AND WHEREAS Rothesay Council did, on **(INSERT DATE)**, authorize the Mayor and Clerk to enter into a development agreement with Andrew Dunn to develop a multi-unit apartment building on the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in the consideration of the mutual covenants and agreements herein expressed and contained, the parties hereto covenant and agree as follows:

1. The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this Agreement:

Schedule A	Property Identifier
Schedule B	Site Plan
Schedule C	Elevations and Floor Plans
2. The Developer agrees that the maximum number of buildings shall not exceed 1 building and the maximum number of units in the building shall not exceed 36 individual apartments.
3. The Town and Developer agree that the Development Officer may, at their discretion, consider a reduction in the total area of the multi-unit apartment building and the resulting applicable and necessary changes to Schedule B as non-substantive and generally in conformance with this Agreement.
4. The Developer expressly agrees and understands that notwithstanding any provision of the Town's Building By-laws or any statutory by-law or regulatory provision to the contrary, the Building Inspector shall not issue a building

permit to the Developer for work directly connected with the development of the Lands, nor shall the Developer be entitled to such a permit unless and until the Developer deposits with the Town an Irrevocable Letter of Credit from a Canadian Chartered Financial Institution or other security acceptable to the Town:

- a) Valued at 50% of the cost of construction to execute the Stormwater Management Plan and works approved by the Development Officer and Director of Operations pursuant to this agreement; and
- b) containing a provision that upon the expiration of a thirty-six (36) month term it be renewed and extended (with appropriate amendments to reduce the sum to an amount sufficient to recover the remaining work) from year to year until such time as the Town has accepted "final completion" of the work mentioned in this agreement.

Off-Site Disturbance

5. The Developer agrees that any disturbance to existing off site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the full responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Director of Operations.

Development Permit

6. The Developer agrees to not commence clearing of trees, removal of topsoil or excavation activities in association with the construction of the development until the Town has approved a development permit for site grading, erosion and sedimentation control as issued by the Development Officer.
7. The Developer agrees that, notwithstanding that a site grading permit may be issued, the Development Officer shall not issue a development permit to the Developer for work directly connected with the construction of buildings on the Lands until the Developer submits the following plans acceptable to the Town:
 1. Storm water Management Plan as per PART 9 of this agreement; and
 2. Landscaping Plan that identifies specific details to provide a buffer or provide screening between the multi-unit apartment building and adjacent residential properties as well as for general aesthetic enhancement.

Municipal Sidewalks

8. The Developer shall carry out and pay for the entire actual cost of a public sidewalk constructed to Town standards within the Town right-of-way along the entire frontage of the Land with Millennium Drive, subject to inspection and approval by the Director of Operations, including the following:
 - a) supply and maintenance of for a period of one (1) year the topsoil, sod, landscaping and the planting of street trees located every 10 meters, or an equivalent number planted in locations approved by the Town, along the length of the public road right-of-way where such trees are as follows:
 - i. Not smaller than six centimetres (6 cm) in diameter measured at a point being 2 meters above the root ball such trees species as approved by the Development Officer.

Storm Water Management

9. The Developer agrees to have a storm water management plan designed by a professional engineer so that the peak surface runoff rates discharged from the development shall not exceed pre-development peak discharge rates as

described in Schedule "D" Storm water Management for Millennium Park Zone of Zoning By-law 2-10.

10. The Developer agrees to carry out and pay for all costs related to the installation of a storm water management system, while ensuring compliance with applicable Town By-laws and subject to inspection and approval by the Director of Operations.
11. The Developer agrees to provide to the Town Engineer written certification of a Professional Engineer, licensed to practice in New Brunswick that the storm water system has been satisfactorily completed and constructed in accordance with the Town specifications.

Water Supply

12. In addition to and notwithstanding the payments committed elsewhere in this agreement the Developer agrees to pay the Town an amount, calculated by the Director of Operations in the manner set out in By-Law 7-04 Water By-Law as amended from time to time, for Permit Connection and Water System Access Fees, which shall be paid to the Town on issuance of the building permit.
13. The Town agrees to supply potable water for the multi-unit apartment building and the associated residential use incidental thereto and for no other purposes whatsoever.
14. The Developer agrees that the water supply shall not be used to service any water-to-air heat pump or exchanger and that there shall be no inter-connection with domestic wells.
15. The Developer agrees to provide and grant to the Town, its successors and assigns, unencumbered easements, in the form customarily used by the Town, which the Town might deem necessary to adequately provide for the operation and maintenance of storm water drainage, water supply systems including the water service laterals and fire hydrants.
16. The Town does not guarantee and nothing in this Agreement shall be deemed to be a guarantee of an uninterrupted supply or of a sufficient or uniform water pressure or a defined quality of water. The Town shall not be liable to the Developer or to any person, firm or corporation for any damage or injury caused by the interruption of the supply of water, the lack of uniform pressure thereof or the quality of water. Further the Developer agrees to the following:
 - (a) The Developer agrees that a separate water meter shall be installed, at their expense, for each connection made to the Town Water System.
 - (b) The Developer agrees that the Town Council may terminate the Developer's connection to the Town water system in the event that the Town finds that the Developer is drawing water for an unauthorized purpose or for any other use that the Town deems in its absolute discretion.
17. The Developer agrees that all connections to the Town water mains shall be approved by the Director of Operations or such other person as is designated by the Town and shall occur at the sole expense of the Developer.
18. The Developer agrees that Town staff shall visually inspect the connection to the Town water mains before the connection is buried. In the event such connections are buried prior to inspection the Developer shall on the demand of Town Staff re-excavate such connections for inspection at no cost to the Town.
19. The written certification of a Professional Engineer, licenced to practice in the

Province of New Brunswick that the connection of service laterals and the connection to the existing town water supply has been satisfactorily completed and constructed in accordance with the Specifications for Developers is required prior to the occupation of any buildings or portions thereof.

Sanitary Sewer System

20. In addition to and notwithstanding the payments committed elsewhere in this agreement the Developer agrees to pay the Town an amount, calculated by the Director of Operations in the manner set out in By-Law 1-15 Sewage By-Law as amended from time to time, for Permit and Sewer Connection Fees which shall be paid to the Town on issuance of the building permit.
21. The Developer shall carry out, ensuring compliance with Town By-laws and Municipal Plan and subject to inspection and approval by Town representatives, and pay for the entire actual costs of the following:
 - a. Engineering design, supply, installation, inspection and construction of all service lateral or laterals necessary to connect to the existing sanitary sewer system inclusive of all pipes, laterals, fittings, and precast concrete units. The Developer shall connect to the existing sanitary sewer system at a point to be determined by the Director of Operations. Connection to the Town sewer system will be made by directional drilling unless otherwise approved by the Director of Operations.
 - b. Providing and granting to the Town, its successors and assigns, unencumbered easements, in the form customarily used by the Town, which the Town might deem necessary to adequately provide for the operation and maintenance of the sanitary sewer inclusive of all pipes, laterals, fittings and precast concrete units crossing the Lands of the Developer.
 - c. The Developer agrees to submit for approval by the Town, prior to commencing any work to connect to the sanitary sewer system, any plans required by the Town, with each such plan meeting the requirements as described in the Specifications for Developers (hereinafter referred to as the "Specifications for Developers").
22. The Developer agrees that all connections to the Town sanitary sewer system shall be supervised by the Developer's professional engineer and inspected by Town staff prior to backfilling and shall occur at the sole expense of the Developer.

Lighting and Property Maintenance

23. The Developer agrees to direct all exterior lighting to driveways, parking areas, building entrances and walkways and that all exterior lighting shall be arranged or directed so as to divert the light away from adjacent residential lots and buildings.
24. The Developer agrees to install decorative pole lights, the style to be approved by the Town for illumination of the driveway and roadway frontage of the lot. The pole lights shall become the responsibility of the property owner and shall be maintained in a manner to ensure continuous operation.
25. The Developer shall maintain, at its own expense, the Lands, buildings or structures shown on the site plan in a condition appropriate to the area in which it is located, such determination to be made in accordance with standards prescribed by the Town.
26. The Developer agrees that refuse containers shall be located inside the multi-unit apartment building compound yard in a location fully screened from adjacent properties and from streets and shall further ensure that all refuse is

removed regularly.

27. The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of buildings, fencing, walkways, signage, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/sanding of walkways and driveways.
28. The Developer expressly agrees and understands that notwithstanding any provision of the Town's Building By-Laws or any statutory by-law or regulatory provision to the contrary, the Building Inspector shall not issue a building permit to the Property Owner for work directly connected with the development of the Lands, nor shall the Property Owner be entitled to such a permit unless and until the Development Officer has approved the Site Plan submitted as part of the Development Permit process illustrating the precise size, location and configuration of the proposed building.

Indemnification

29. The Developer does hereby indemnify and save harmless the Town from all manner of claims or actions by third parties arising out of the work performed hereunder, and the Developer shall file with the Town prior to the commencement of any work hereunder a certificate of insurance naming the Town as co-insured evidencing a policy of comprehensive general liability coverage on "an occurrence basis" and containing a cross-liability clause which policy has a limit of not less than Two Million Dollars (\$2,000,000.⁰⁰). The aforesaid certificate must provide that the coverage shall stay in force and not be amended, canceled or allowed to lapse within thirty (30) days prior to notice in writing being given to the Town. The aforesaid insurance coverage must remain in full force and effect during the period available to the Developer pursuant to this agreement to complete the work set out as described in this Agreement.

Notice

30. Any notice or advice which is to be given under this Agreement shall be deemed to have been satisfactorily given to the Developer if delivered personally or by prepaid mail addressed to **ANDREW DUNN, 871 South Barnaby Road, Barnaby River, NB, E1N 6G2** and to the TOWN if delivered personally or by prepaid mail addressed to ROTHEsay, 70 Hampton Road, Rothesay, New Brunswick, E2E 5L5. In the event of notice by prepaid mail, the notice will be deemed to have been received four (4) days following its posting.

By-laws

31. The Developer agrees to be bound by and to act in accordance with the By-laws of the Town and such other laws and regulations that apply or may apply in future to the site and to activities carried out thereon.

Termination

32. The Town reserves the right and the Developer agrees that the Town has the right to terminate this Agreement without compensation to the Developer if the specific proposal has not commenced on or before **(INSERT DATE)** being a date 5 years (60 months) from the date of Council's decision to enter into this Agreement. Accordingly the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Rothesay Zoning By-law.
33. Notwithstanding Part 32 (above), the Parties agree that the development shall be deemed to have commenced if within a period of not less than three (3) months prior to **(INSERT DATE)** the construction of the private street and

municipal service infrastructure has begun and that such construction is deemed by the Development Officer in consultation with the Town Engineer as being continued through to completion as continuously and expeditiously as deemed reasonable.

34. The Developer agrees that should the Town terminate this Agreement the Town may call the Letter of Credit described herein and apply the proceeds to the cost of completing the work or portions thereof as outlined in the agreement. If there are amounts remaining after the completion of the work in accordance with this agreement, the remainder of the proceeds shall be returned to the Institution issuing the Letter of Credit. If the proceeds of the Letter of Credit are insufficient to compensate the Town for the costs of completing the work mentioned in this agreement, the Developer shall promptly on receipt of an invoice pay to the Town the full amount owing as required to complete the work.

Security & Occupancy

35. The Town and Developer agree that no Occupancy Permit shall be issued by the Town until the Developer has complied with all applicable provisions of this Agreement and the Zoning By-law and with the terms and conditions of all permits, licenses, and approvals as required to be obtained by the Developer.
36. Notwithstanding Part 35 (above), the Town agrees that the Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the required; storm water management plan infrastructure; the sidewalk along Millennium Drive and site landscaping. The security deposit shall comply with the following conditions:
- a. security in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank dispensed to and in favour of Rothesay;
 - b. the Developer agrees that if the sidewalk, landscaping or storm water plan infrastructure are not substantially completed within a period not exceeding six (6) months from the date of issuance of the Occupancy Permit, the Town may use the security to complete the work as set out in this Agreement;
 - c. the Developer agrees to reimburse the Town for 100% of all costs exceeding the security necessary to complete the work as set out in this Agreement; and
 - d. the Town agrees that the security or unused portion of the security shall be returned to the Developer upon certification that the work has been completed and acceptable to the Development Officer.

Entire Agreement

37. This Agreement contains the whole agreement between the parties hereto and supersedes any prior agreement as regards the lands outlined in the plan hereto annexed.

Severability

38. If any paragraph or part of this agreement is found to be illegal or beyond the power of the Town Council to execute, such paragraph or part or item shall be deemed to be severable and all other paragraphs or parts of this agreement shall be deemed to be separate and independent therefrom and to be agreed as such.

Reasonableness

39. Both parties agree to act reasonably in connection with any matter, action, decision, comment or approval required or contemplated under this Agreement.

This Agreement shall be binding upon and endure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

IN WITNESS HEREOF the parties have duly executed these presents the day and year first above written.

Date: _____, 2017

Andrew Dunn **PENDING CORPORATE REGISTRATION**

Witness:

Andrew Dunn, Director

Rothesay:

Witness:

Mayor

Witness:

Clerk

SCHEDULE A

PID 00065227

(PID to be retired pending lot subdivision)

15.0m EXISTING VEGETATION BUFFER TO REMAIN

LANDSCAPED

ASPHALT
PARKING
LOT

LANDSCAPED

7.5m

EXISTING VEGETATI
TO REMAIN

PROPOSED 4-STOREY,
36 UNIT BUILDING

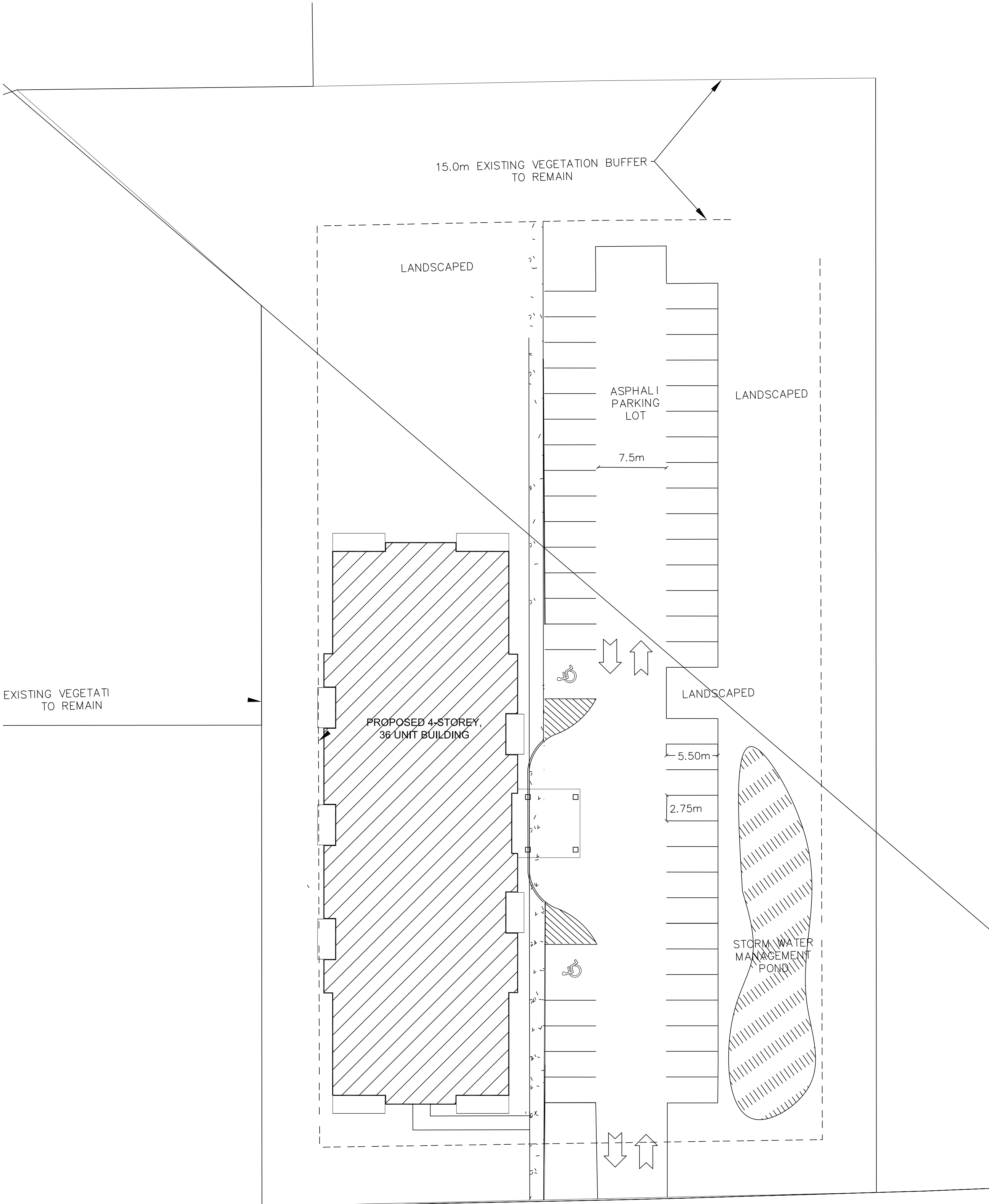
LANDSCAPED

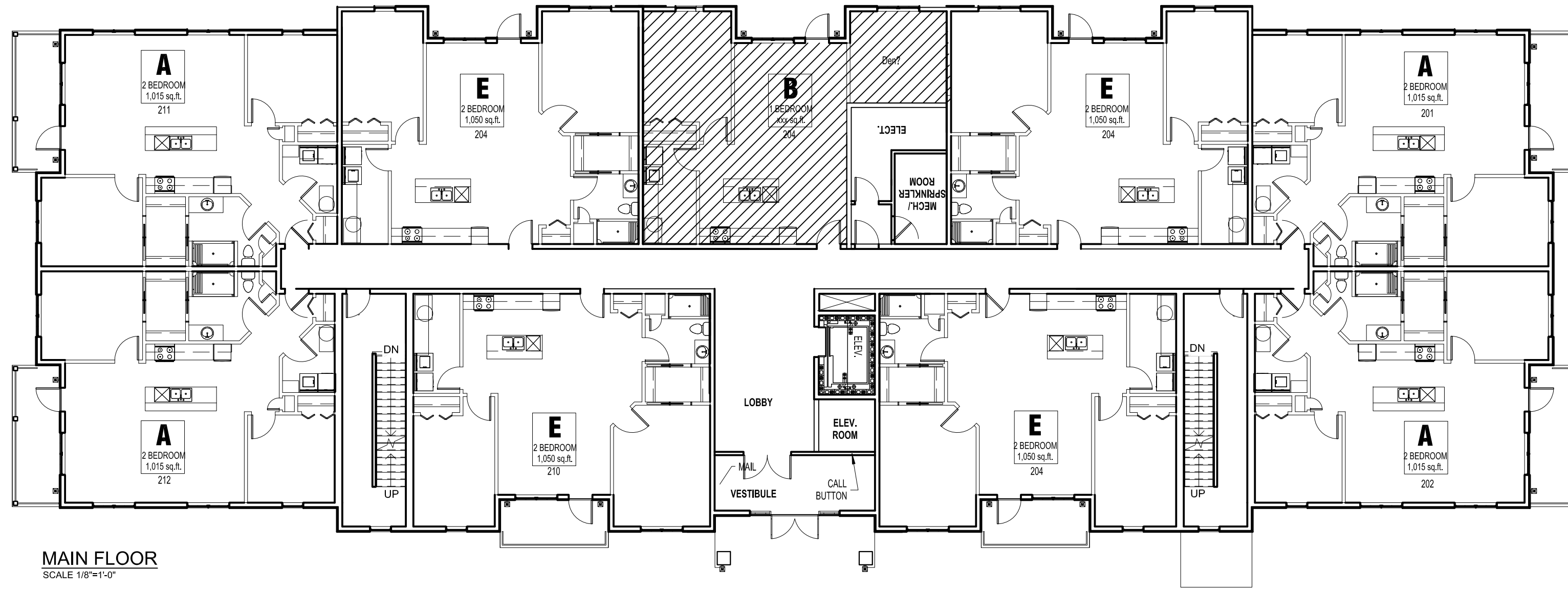
5.50m

2.75m

STORM WATER
MANAGEMENT
POND

MILLENNIUM DRIVE





MAIN FLOOR
SCALE 1/8"=1'-0"

191'-3" [58.29m]



2nd FLOOR
SCALE 1/8"=1'-0"

66'-0" [20.11m]

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent:

Andrew Dunn
PENDING CORPORATE REGISTRATION

88 Hilltop Drive
Hampton, NB
E5N 5P2

Office Held by Deponent:

Director

Corporation:

Andrew Dunn

Place of Execution:

Rothesay, Province of New Brunswick.

Date of Execution:

_____, 2017.

I, **Andrew Dunn**, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
3. the signature "**Andrew Dunn**" subscribed to the within instrument is the signature of me and is in the proper handwriting of me, this deponent.
4. the Seal affixed to the foregoing indenture is the official seal of the said Corporation was so affixed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
5. That the instrument was executed at the place and on the date specified above;

DECLARED TO at town of
Rothesay, in the County of Kings,)
and Province of New Brunswick,)
This ___ day of _____, 2017)
)

BEFORE ME:)

_____))
Commissioner of Oaths)

_____))
Andrew Dunn)

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: MARY JANE E. BANKS

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5

Office Held by Deponent: Clerk

Corporation: Rothesay

Other Officer Who Executed the Instrument: NANCY E. GRANT

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5

Office Held by Other Officer Who Executed the Instrument: Mayor

Place of Execution: Rothesay, Province of New Brunswick.

Date of Execution: _____, 2017.

I, MARY JANE E. BANKS, the deponent, make oath and say:

- 1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
6. That the attached instrument was executed by me and NANCY E. GRANT, the other officer specified above, as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
7. the signature "Nancy E. Grant" subscribed to the within instrument is the signature of Nancy E. Grant, who is the Mayor of the town of Rothesay, and the signature "Mary Jane E. Banks" subscribed to the within instrument as Clerk is the signature of me and is in the proper handwriting of me, this deponent, and was hereto subscribed pursuant to resolution of the Council of the said Town to and for the uses and purposes therein expressed and contained;
8. the Seal affixed to the foregoing indenture is the official seal of the said Town and was so affixed by order of the Council of the said Town, to and for the uses and purposes therein expressed and contained;
9. That the instrument was executed at the place and on the date specified above;

DECLARED TO at town of
Rothesay, in the County of Kings,)
and Province of New Brunswick,)
This ___ day of _____, 2017.)
)

BEFORE ME:)
)
)
)
Commissioner of Oaths)

_____)
MARY JANE E. BANKS