

DEVELOPMENT AGREEMENT

THIS AGREEMENT made this 16th day of May, 2002.

BETWEEN:

THE MUNICIPALITY OF THE DISTRICT OF WEST HANTS, a body corporate pursuant to the Municipal Government Act, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia, (Hereinafter referred to as the "Municipality")

OF THE FIRST PART

- and -

DARYL SHEEHY and KRISTIE SHEEHY, of Avondale, in the County of Hants, Province of Nova Scotia, (Hereinafter referred to as the "Owners")

OF THE SECOND PART

WHEREAS the Owners own certain lands and premises located at 509 Avondale Road, Avondale (PID 45247350), hereinafter referred to as the "Property", which lands are more particularly described in Schedule 'A' attached hereto;

AND WHEREAS the Owners have been issued development permits authorizing the operation of a greenhouse and nursery, as well as an accessory farm sales outlet for the sale of farm products grown on their farm;

AND WHEREAS the Owners wish to expand the business to include several non-resource commercial uses that are not permitted in the Agriculture Priority 1 (AR-1 zone) of the West Hants Area One Land Use By-law (the "Land Use By-law");

AND WHEREAS a condition of the granting of approval by the Municipality is that the Owners enter into a development agreement;

AND WHEREAS the Council of the Municipality approved the Owners' application for a development agreement at a meeting held on the 9th day of April, 2002, pursuant to Policy 11.2.4 of the West Hants Area One Municipal Planning Strategy;

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

1. USE OF LAND AND BUILDINGS

- (a) The uses permitted on the Property shall be limited to: (i) greenhouses, nursery, and accessory farm sales outlet for the retail sale of Christmas trees, nursery stock and produce grown on the Property, and associated items such as gardening tools and supplies, and garden furnishings

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HANTS COUNTY REGISTRY OF DEEDS stamp: Document # 2270, Book 958, Pages 533-540, MAY 17 2002, 9:59 AM, Tina Landzaat Registrar

HANTS COUNTY REGISTRY OF DEEDS stamp: Document # 8660, Book 958, Pages 533-540, MAY 17 2002, Jane Burns Registrar

- and statuary;
- (ii) fabrication of arts and crafts, *and arts and crafts training workshops*;
 - (iii) retail sales and video rentals conducted in a wholly enclosed building, except that arts and crafts, and produce such as fruit and vegetables may be displayed outside the building in accordance with Section 5 herein; and
 - (iv) ticket sales outlet for tourism-related recreational activities such as river rafting, tours, and similar activities.
- (b) No other uses are permitted on the Property, except that any use permitted as-of-right in the underlying zone may be permitted provided that the requirements of the Land Use By-law can be satisfied, or where they conflict with this agreement, that the more stringent can be satisfied.
- (c) The maximum floor area devoted to the uses described in Subsections 1(a)(ii), (iii) and (iv) shall be limited to One Thousand Five Hundred (1,500) square feet.

2. YARDS AND BUILDING EXPANSION

- (a) The minimum side yard requirement shall be twenty (20) feet and the minimum front and rear yard requirement shall be twenty-five (25) feet.
- (b) Nothing in this agreement shall prevent the erection of any new building or the expansion of any existing building on the Property, provided that all requirements of this agreement and the Land Use By-law can be satisfied.

3. HOURS OF OPERATION

The hours of operation shall be limited to between 6 a.m. and 11 p.m.

4. PARKING AND ACCESS

- (a) Parking shall be provided on the site in accordance with the parking requirements for commercial uses as set out in the Land Use By-law.
- (b) Access to the property shall be in accordance with the requirements of the Nova Scotia Department of Transportation and Public Works as shown on the Site Plan attached hereto as Schedule "B". The Owners shall complete the following work not later than May 31, 2002:
- (i) a new driveway entrance to the Property shall be constructed approximately eight (8) meters from the southeast corner of the Property;
 - (ii) the existing driveway in the centre of the Property shall be removed;
 - (iii) access to the residential driveway for 501 Avondale Road at the southwest corner of the Property shall be blocked by means of a fence, gate, trees, shrubs or other barrier.

5. OUTDOOR STORAGE AND DISPLAY AREAS

- (a) No outdoor storage will be permitted in any required side or front yard.

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DMZ

- (b) Outdoor display areas shall be maintained at all times in a neat and orderly state and shall be limited to:
- (i) fruit and vegetables;
 - (ii) arts and crafts; and
 - (iii) Christmas trees, nursery stock and products associated with the greenhouse and nursery, including garden furnishings and statuary, and gardening tools and supplies.

6. AMENDMENTS

- (a) The provisions of this Agreement relating to the following matters are not deemed to be substantial and may be amended by resolution of Council:
- (i) outdoor storage and outdoor display areas;
 - (ii) hours of operation.
- (b) Amendments to any matters not identified under Section 5(a) shall be deemed substantial and may only be amended in accordance with the provisions of Section 230 of the *Municipal Government Act*.

7. MAINTENANCE

The Owners shall keep the Property and any portion thereof clean and in good repair. Any fences, lawns, trees, shrubs, walkways and other landscaping elements shall be regularly maintained and any kept in a tidy state and free from unkempt materials or matter of any kind.

8. ADMINISTRATION AND ENFORCEMENT

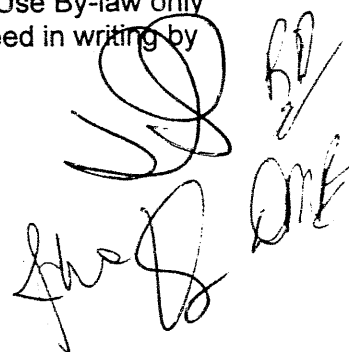
- (a) This Agreement shall be administered by the Development Officer for the Municipality.
- (b) Enforcement of this Agreement shall be the responsibility of the Municipality.

9. LAND USE BY-LAW

All references in this agreement to the "Land Use By-law" are to the *West Hants Area One Land Use By-law*, or its successors.

10. COMPLIANCE WITH OTHER BY-LAWS, REGULATIONS, AND STATUTES

The Owners shall comply with the requirements of all by-laws of the Municipality and with all applicable statutes and regulations of the Province of Nova Scotia, and Government of Canada. Where the provisions in this agreement conflict with those of any other municipal, provincial, or federal requirements, the higher or more stringent regulations shall prevail. Provided, however, that development on the site shall be exempted from the provisions of the Land Use By-law only as particularly provided for in this agreement, and any amendments thereto agreed in writing by the parties, and not otherwise.



 SS
 JH
 QMF

11. ONUS FOR COMPLIANCE ON OWNER

Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

12. REGISTRATION OF AGREEMENT

The Development Agreement shall be recorded as a charge or encumbrance upon the Property.

13. COSTS

The costs associated with the advertising and notification to adjacent property owners required for this agreement, as well as the cost of recording and filing all documents in connection with this agreement shall be borne by the Owners.

14. AGREEMENT AND PERMITS

- (a) This Agreement shall not be entered into, or signed by both parties, until either the time for appeal under Section 247 of the *Municipal Government Act* has expired, or any appeals which have been lodged have been disposed of and the resolution of Council has been affirmed by the Nova Scotia Utility and Review Board.
- (b) Neither a development permit nor a building permit shall be issued until this Agreement has been entered into by both parties, at which time all necessary permits shall be issued.

15. DEVELOPMENT AGREEMENT BOUND TO LAND

This agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*, whereupon the Land Use By-law shall apply.

16. SEVERABILITY OF PROVISIONS

It is agreed between the parties hereto that the provisions of this Agreement are severable one from the other, and that the invalidity or unenforceability of any provision does not affect the validity or enforcement of any other provision.

17. BREACH OF TERMS OR CONDITIONS

The Municipality, upon breach of any term or condition of this agreement may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and upon breach by the Owners of any term or condition of this agreement, the Municipality may, after thirty (30) days

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notice in writing to the Owners, enter and perform any of the terms and conditions of the agreement or terminate the agreement. It is agreed that all reasonable expenses, including costs on a solicitor and client basis, whether arising out of the entry into or from the performance of the terms and conditions may be recovered from the Owners by direct suit and shall form a charge upon the land.

18. INTERPRETATION

Where the context required, the singular shall include the plural and masculine gender shall include the feminine and neutral gender. All words appearing in this agreement shall carry the meaning defined in the *West Hants Area One Land Use By-law*, except those which may have a specific definition herein.

19. TIME

Time shall be of the essence in this agreement.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED)
 in the presence of)
 _____)
 Witness *Chislett*)
 _____)
 Witness *Chislett*)
 _____)
 Witness *Shayne Davis*)
 _____)
 Witness *Shayne Davis*)
 _____)

MUNICIPALITY OF THE DISTRICT OF WEST HANTS

Per: *Richard Dauphinee*
Warden

Per: *Ambernet*
C.A.O., Clerk-Treasurer

Daryl Sheehy
DARYL SHEEHY

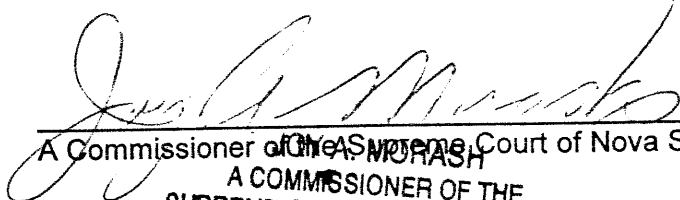
Kristie Sheehy
KRISTIE SHEEHY

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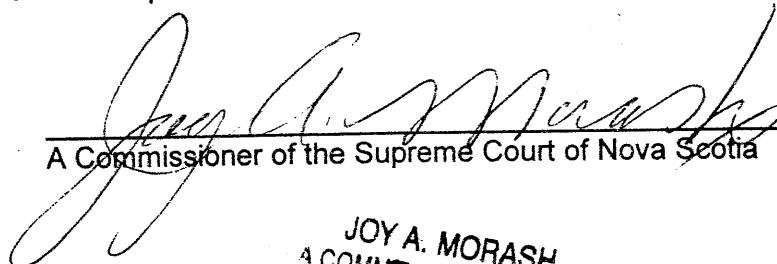
PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS

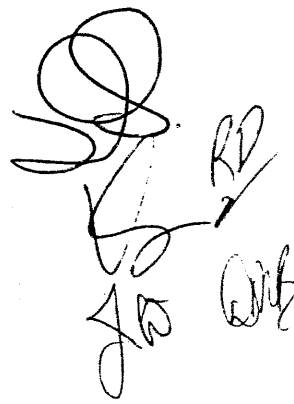
ON THIS 16 day of May, A.D. 2002, before me, the subscriber,
personally came and appeared Cheryl Cristlett, a subscribing witness to
the foregoing Indenture, who, having been by me duly sworn, made oath and said that **THE
MUNICIPALITY OF THE DISTRICT OF WEST HANTS**, one of the parties thereto, caused the
same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed
in h presence.


A Commissioner of the Supreme Court of Nova Scotia
A COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS

ON THIS 16th day of May, A.D. 2002, before me, the subscriber,
personally came and appeared J LYNNA DAVIS, a subscribing witness to
the foregoing Indenture, who, having been by me duly sworn, made oath and said that **DARYL
SHEEHY and KRISTIE SHEEHY**, two of the parties thereto, signed, sealed and delivered the
same in h er presence.


A Commissioner of the Supreme Court of Nova Scotia
JOY A. MORASH
A COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA



Schedule "B"

Site Plan for
Development Agreement
Access Requirements

509 Avondale Road

Legend



Roads
Parcels

X... Fence Line

Prepared by: Windsor West Hants
Joint Planning Advisory Committee
March 2002

Scale

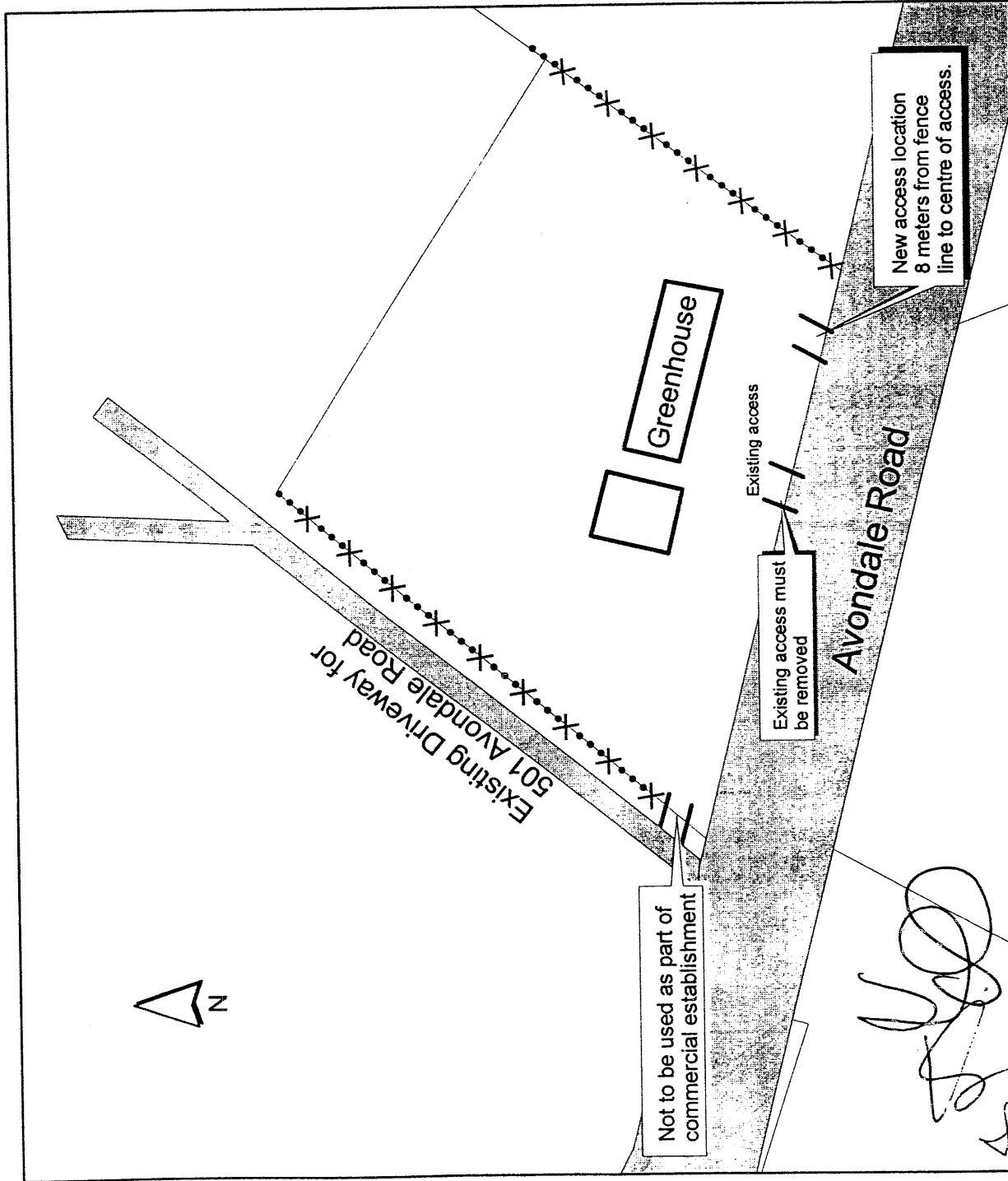
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Base Data derived from Nova Scotia Records
Database (NSPRD). Copyright Her Majesty The
Queen in Right of the Province of Nova Scotia.



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SCHEDULE "A"

LOT DS-4

ALL THAT parcel of land situate on the northerly side of Avondale Road, at Avondale, in the County of Hants, Province of Nova Scotia, being designated as Lot DS-4 on a "Plan of Survey of Lot DS-4 being a Subdivision of Lands of Daryl Sheehy and Kristie Sheehy"; said plan prepared by Wallace, Macdonald & Lively, Ltd., dated April 26, 1995 and signed by Kirk T. Nutter, N.S.L.S.; said Lot DS-4 having an area of 54,494 square feet, more or less, and being more particularly described as follows:

PREMISING that the line joining Nova Scotia Coordinate Monument 10367 to Nova Scotia Coordinate Monument 10366 has a grid bearing of North $86^{\circ}42'06''$ West referred to Meridian $64^{\circ}30'$ West and relating all bearings herein thereto;

COMMENCING at a survey marker placed on the northerly limit of Avondale Road at the most westerly corner of Lands now or formerly of Libbie Knowles and Herman Parker, as shown on said plan;

THENCE North $39^{\circ}00'43''$ East along said Knowles and Parker Lands, a distance of 155.21 feet to a survey marker;

THENCE North $53^{\circ}56'42''$ West, a distance of 247.16 feet to a survey marker;

THENCE South $45^{\circ}37'19''$ West, a distance of 270.17 feet to a survey marker;

THENCE South $75^{\circ}21'35''$ East along the northerly limit of Avondale Road, a distance of 305.13 feet to the point of commencement.

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