

THIS AMENDING AGREEMENT made this 9 day of October, 2001.

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 -

MANTUA CASH & CARRY LIMITED, a body corporate, with head office at Newport, in the County of Hants, Province of Nova Scotia, (hereinafter referred to as "the Owner")

OF THE SECOND PART

WHEREAS the Municipality and Alan W. Dill and Judith E. Dill entered into a Development Agreement, said agreement being attached hereto as Schedule "A", dated the 26th day of January, 1999, which agreement was recorded at the Registry of Deeds at Windsor, in the County of Hants, Province of Nova Scotia, on the 28th day of January, 1999, in Book 854, at Pages 298-305, as Document No. 420;

AND WHEREAS title to the property was subsequently transferred from Alan W. Dill and Judith E. Dill to Mantua Cash & Carry Limited (the "Owner") by Deed dated the 5th day of January, 2000, and recorded at the Registry of Deeds at Windsor, in the County of Hants, Province of Nova Scotia, on the 6th day of January, 2000, in Book 879, at Page 339, as Document No. 28;

AND WHEREAS the Owner wishes to amend the Development Agreement to allow for a new use in addition to those permitted by Clause 1 of the agreement;

AND WHEREAS the Council of the Municipality approved this request at a meeting held on the 11th day of September, 2001, 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. Clause 1 of the Development Agreement is amended by deleting subclauses 1(a) and (b) and inserting new subclauses 1(a), (b) and (d) as follows:
 - (a) The uses permitted on the Property shall be limited to a convenience store, restaurant, and accessory residential use;
 - (b) The maximum floor area of the building devoted to the convenience store and restaurant shall not exceed 1,500 square

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| HANTS COUNTY REGISTRY OF DEEDS | | | 4569 | 934 | 602-612 |
| I certify that this document was registered as shown here. | | | Document # | Book | Pages |
| Tina Landzaat | Registrar | | OCT 10 2001 | 2:01 PM | |
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feet, with no more than 20 percent of the permitted floor area being allocated to the restaurant use;

- (c)
- (d) For the purposes of this agreement, "restaurant" is defined as a portion of the building where food and drink is prepared and served to the public for consumption within the building or for take-out.

2. Clause 5(a) of the Development Agreement is amended by replacing the words "Section 73 of the Planning Act" with the words "Section 230 of the Municipal Government Act".
3. Clause 12 (a) of the Development Agreement is amended by replacing the words "Section 78 of the Planning Act" with the words "Section 247 of the Municipal Government Act".
4. Clause 13 of the Development Agreement is amended by replacing the words "Section 76(3) of the Planning Act" with the words "Section 229 of the Municipal Government Act".
5. Clause 15 of the Development Agreement is amended by replacing the words "Section 80 of the Planning Act" with the words "Section 264 of the Municipal Government Act".
6. The parties hereby agree that all remaining terms and conditions of the Development Agreement dated the 26th day of January, A.D. 1999 attached hereto as Schedule "A" be and shall remain in full force and effect.

IN WITNESS WHEREOF the Municipality and the Owner have hereunto by their proper officers set their hands and affixed their seals the day and year first above written.

SIGNED SEALED AND DELIVERED)

in the presence of:)

Cheryl Chislett)
WITNESS)

Cheryl Chislett)
WITNESS)

Velma Macumber)
WITNESS)

Velma Macumber)
WITNESS)

MUNICIPALITY OF THE DISTRICT OF WEST HANTS

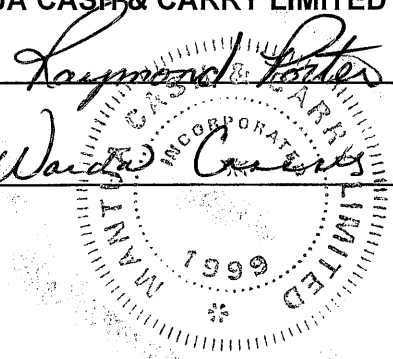
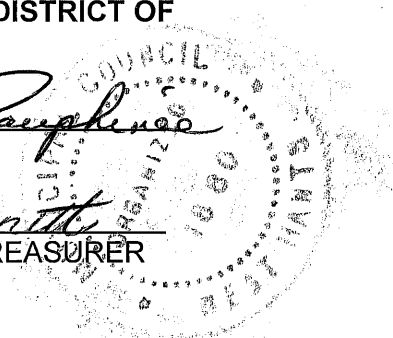
PER: Richard Paughnes)
WARDEN)

PER: D. Bennett)
C.A.O., CLERK-TREASURER)

MANTUA CASH & CARRY LIMITED

PER: Raymond Porter)

PER: Wanda Coates)



WMC

PROVINCE OF NOVA SCOTIA)
COUNTY OF HANTS)

ON THIS *9th* day of *October* A.D. 2001, before me, the subscriber, personally came and appeared *Cheryl Chislett* 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 *her* presence.

Joy A. Morash
A Commissioner of the Supreme Court of Nova Scotia

JOY A. MORASH
A COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

PROVINCE OF NOVA SCOTIA)
COUNTY OF HANTS)

ON THIS *9th* day of *October* A.D. 2001, before me, the subscriber, personally came and appeared *Velma Macumber* a subscribing witness to the foregoing indenture, who, having been by me duly sworn, made oath and said that **MANTUA CASH & CARRY LIMITED**, 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 *her* presence.

Joy A. Morash
A Commissioner of the Supreme Court of Nova Scotia

JOY A. MORASH
A COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

*RHP
wnc*

SCHEDULE "A"

298

DEVELOPMENT AGREEMENT

605

THIS AGREEMENT MADE THIS 26 DAY OF January 19 99

BETWEEN:

THE MUNICIPALITY OF THE DISTRICT OF WEST HANTS, a body corporate pursuant to the *Municipal 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";

AND

ALAN W. DILL and JUDITH E. DILL, of Mantua, in the County of Hants, Province of Nova Scotia; hereinafter referred to as the "Owners";

WHEREAS the Owners own certain lands and premises located at 1634 Avondale Road, Mantua, hereinafter referred to as the "Property", which lands are more particularly described in Schedule 'A' attached hereto;

AND WHEREAS the Owners have operated a convenience store on the Property since 1993 under the "home occupation" provisions of Part 5 of the *West Hants Area One Land Use By-law*, hereinafter referred to as the "By-law";

AND WHEREAS for the purposes of this agreement, "convenience store" is defined as a retail store offering to the public various convenience goods and items of day-to-day use or necessity including, but not so as to limit the generality of the foregoing, food, beverages, pharmaceutical drugs, tobacco products, periodicals and video rentals;

AND WHEREAS the Owners wish to build an addition which would expand the convenience store in excess of the 1000 square feet of floor area permitted under the home occupation provisions of the By-law;

AND WHEREAS a condition of the granting of approval of Council is that the Owners enter into an agreement to permit the operation of the aforesaid convenience store pursuant to Policy 11.2.4 of the *West Hants Area One Municipal Planning Strategy (MPS)*;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the mutual covenants herein contained, the Municipality and the Owners hereby agree as follows:

1. USE OF LAND AND BUILDINGS

- (a) The uses permitted on the Property shall be limited to a convenience store and accessory residential use;
- (b) The maximum floor area of the building devoted to the convenience store shall not exceed 1,500 square feet;
- (c) No other uses are permitted on the Property, except that any use permitted as-of-right in

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|-------------------------------------------------------------------------------------------------------------------------|----------------|---------------|----------------|
| HANTS COUNTY REGISTRY OF DEEDS I certify that this document was registered as shown here. Tina Landzaat Registrar | <u>420</u> | <u>854</u> | <u>298-305</u> |
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 [Signature]
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the underlying zone, may be permitted provided that the requirements of the By-law can be satisfied, or where they conflict with this agreement, that the more stringent can be satisfied.

2. YARDS AND OPEN STORAGE

- (a) The minimum side yard requirement shall be 20 feet and the minimum front and rear yard requirement shall be 25 feet;
- (b) No open storage will be permitted in any front or side yard. Any outdoor storage shall be in an enclosed structure or in some way adequately screened so as not to be visible from nearby properties and abutting roads.

3. HOURS OF OPERATION

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

4. SIGNAGE

Signage permitted on the property in conjunction with the convenience store shall:

- (a) be limited to one facial wall sign, not to exceed 20 square feet in area; and
- (b) two ground signs, not to exceed 10 feet in height and 32 square feet in area, to be set back at least five (5) feet from all property lines.

5. AMENDMENTS

- (a) Any substantial amendments to this Agreement shall be subject to the procedures provided for in Section 73 of the Planning Act.
- (b) Any amendments, whether substantial or otherwise, shall be approved by both parties in writing.

6. MAINTENANCE

The Owners shall keep the Development and any portion thereof clean and in good repair.

7. 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.

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8. 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 *West Hants Area One Land Use By-law*, only as particularly provided for in this agreement, and any amendments therefore agreed in writing by the parties, and not otherwise.

9. 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.

10. REGISTRATION OF AGREEMENT

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

11. 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.

12. AGREEMENT AND PERMITS

- (a) This Agreement shall not be entered into, or signed by both parties, until either the time for appeal under Section 78 of the Planning 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.

13. DEVELOPMENT AGREEMENTS 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 76(3) of the Planning Act as amended, whereupon the *Land Use By-law* shall apply.

14. SEVERABILITY OF PROVISIONS

It is agreed between the parties hereto that the provisions of this Agreement are severable one

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from the other, and that the invalidity or unenforceability of any provision does not affect the validity or enforcement of any other provision.

15. 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 80 of the *Planning Act* and upon breach by the Owners of any term or condition of this agreement, the Municipality may, after thirty (30) days 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.

16. INTERPRETATION

Where the context requires, 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.

17. 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:

Cheryl Chislett
Witness

Cheryl Chislett
Witness

Lynn Davis
Witness

Lynn Davis
Witness

MUNICIPALITY OF THE DISTRICT OF
WEST HANTS

Per: _____
M. B. ...

Per: _____
Richard ... Warden

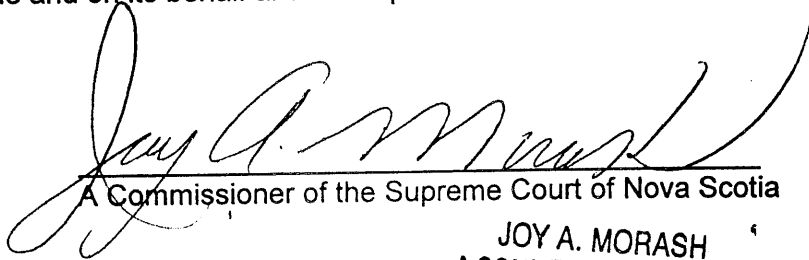
ALAN W. DILL

Judith E. Dill
JUDITH E. DILL

Handwritten initials/signature

PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS

ON THIS 26th day of January, AD., 1998, before me, the subscriber, personally came and appeared Cheryl Chislett, 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 her presence.

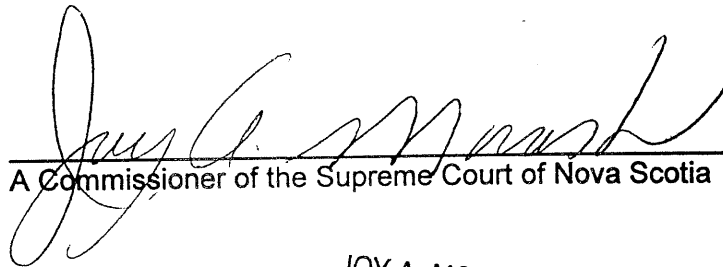


A Commissioner of the Supreme Court of Nova Scotia

JOY A. MORASH
A COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS

ON THIS 26th day of January, AD., 1998, before me, the subscriber, personally came and appeared J. LYNN DAVIS, a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that ALAN W. DILL and JUDITH E. DILL, two of the parties thereto, signed, sealed and delivered the same in her presence.



A Commissioner of the Supreme Court of Nova Scotia

JOY A. MORASH
A COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

Ratt
wmc

LIST OF SCHEDULES

SCHEDULE A - Legal Description

SCHEDULE B - Survey Plan

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