

DEVELOPMENT AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2021.

BETWEEN:

DURAMAX HOLDINGS INC., a company existing under the laws of the Province of Nova Scotia (the "**Developer**")

OF THE FIRST PART

- and -

MUNICIPALITY OF THE DISTRICT OF BARRINGTON, a municipal body corporate (the "**Municipality**")

OF THE SECOND PART

WHEREAS:

- A. The Developer is the registered owner of certain lands located at PID 82576521 and municipally known as 3412 Highway 3, Barrington Passage, Nova Scotia, as more particularly described in Schedule A attached hereto (the "**Property**"); and
- B. The Developer is desirous of developing a portion of the Property for the purposes of operating a lounge in accordance with the *Liquor Control Act* (Nova Scotia); and
- C. The Property is zoned Commercial General pursuant to the Land Use By-law for the Municipality of the District of Barrington, dated November 25, 2013, as amended to September 23, 2019 (the "**LUB**"); and
- D. The LUB permits the development of a Lounge within the Commercial General Zone subject to Policy CG-4 of the Municipal Planning Strategy for the Municipality of the District of Barrington, dated November 25, 2013, as amended to September 23, 2019 (the "**MPS**"); and
- E. Policy CG-4 of the MPS provides that a Development Agreement must be entered into for the development of a lounge in the Commercial General Zone; and;
- F. The proposed development of the Property for a Lounge use has been considered at a Public Hearing held on _____ and approved by a majority vote of the Council of the Municipality of the District of Barrington at a meeting held on _____; and
- G. This Development Agreement satisfies the criteria required by Policy IMP-17 of the MPS for development agreements;
- H. the Municipality and the Developer have agreed to enter into this Agreement to establish the conditions under which the Development (as defined herein) may take place.

NOW THEREFORE THIS WITNESSETH that pursuant to the relevant zoning and development bylaws governing the Property and in consideration of the covenants hereinafter expressed the parties covenant and agree with one another as follows:

ARTICLE 1 - DEFINITIONS AND SCHEDULES

1.1 Definitions. In this Agreement:

- (a) "**Development**" means the construction of and use of a building and associated use of a portion of the Property for the purposes of:
 - (i) a lounge, bar and eating establishment and food service area, together with the operation of VLTs; and
 - (ii) reception, office space, and laundry facilities in connection with the motel business operated by the Developer at the Property;
- (b) "**LUB**" has the meaning set out in the recitals;
- (c) "**MPS**" has the meaning set out in the recitals;
- (d) "**Property**" has the meaning set out in the recitals;
- (e) "**VLT**" means a video lottery terminal operated in accordance with the *Gaming Control Act* (Nova Scotia)

1.2 Schedules. The following schedule forms part of this Agreement:

- (a) Schedule A – Property;
- (b) Schedule B – Plans.

ARTICLE 2 - TERMS OF DEVELOPMENT

2.1 Approval. Subject to the terms of the Agreement, the Municipality approves the Development.

2.2 Location of Development. The Development shall be located on the Property.

2.3 Use of the Property. The use of the Property shall be limited to:

- (a) those purposes as described in the Agreement, with such minor changes that do not significantly alter the intended effect of this Agreement;
- (b) the motel business currently operated by the Developer at the Property; and
- (c) such other uses in accordance with the Commercial General Zone provisions of the LUB.

2.4 Conformity with the Development Agreement.

- (a) The Development shall be completed in general conformity with the floor and design plans attached as Schedule B hereto.

- (b) All other matters shall be deemed not substantive and may be undertaken provided they conform with all applicable Municipal, Provincial or Federal regulatory requirements and conditions.

2.5 Operation of Development. The operation of the Development shall be carried out in accordance with the following terms and conditions:

- (a) The operation of the Development shall comply with the *Liquor Control Act* (Nova Scotia) and the *Gaming Control Act* (Nova Scotia) and any applicable permits or approvals issued to the Developer thereunder.
- (b) The hours of operation of the lounge portion of the Development shall be restricted to a closing hour of 1:00 am.
- (c) Adult entertainment is prohibited at all times.
- (d) At no times shall live outdoor entertainment be permitted and outdoor noise levels shall be subject to the Noise By-Law, By-Law No. 9, or any replacement thereof.
- (e) Parking will be provided on the Property in compliance with the LUB.
- (f) The Developer agrees to maintain the site in a neat and tidy manner after construction has been completed, and as best as is reasonably possible during construction.
- (g) Garbage, compost, refuse, and recyclables shall be stored within the building or visually screened from public streets.
- (h) Utility equipment such as mechanical and electrical equipment shall be visually screened from public streets.
- (i) Except where specifically stated otherwise in this Agreement the Development shall comply with the MPS, LUB, the terms of any permits or approvals granted by the Municipality and any other applicable federal, provincial and municipal laws, by-laws and regulations.

2.6 Permits. This Agreement allows the Developer to obtain development permits and other permissions to allow the uses permitted by this Agreement, provided that the Developer shall be responsible for obtaining all necessary permits and approvals as required by law for the Development.

2.7 Current Use. This Agreement shall not restrict the current use of the Property.

2.8 Compliance with other By-Laws and Regulations. Nothing in this Development Agreement shall exempt the Developer from complying with other By-Laws or Regulations in force within the Municipality, or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority or approval required.

ARTICLE 3 - COSTS

3.1 Costs. The Developer agrees to be responsible for the cost to register this Agreement.

ARTICLE 4 - TIMING

- 4.1 Commencement. This Development Agreement shall be deemed to be in effect as of the date first written above. Development shall commence within one year of the effective date of this Development Agreement, or this Development Agreement or portions of it may be discharged by the Municipality without the concurrence of the property owner.
- 4.2 Completion. The Developer shall complete the Development within one year of the commencement of the Development. If the Development is not completed within one (1) year from the commencement of the Development, 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 Council the Developer's rights hereunder are preserved and Council shall apply appropriate zoning pursuant to the MPS and LUB.

ARTICLE 5 - DEFAULT

- 5.1 Entry to Property. If the Developer fails to comply strictly with any term of this Development Agreement or any legislation applicable to this Development Agreement, the Municipality may, after 30 days' notice in writing to the Developer, enter the Property and perform any obligation with which the Developer has failed to strictly comply. All expenses arising out of the entry to the Property and performance of the obligations may be recovered by the Municipality from the Developer by direct suit and shall form a charge upon the lands. The Developer shall pay interest on any sum so expended by the Municipality at the same rate the Municipality charges per month for uncollected taxes on the outstanding balance from time to time. Such interest costs shall be treated as an expense.
- 5.2 Default. If the Developer breaches any of the terms of this Development Agreement, the Municipality may, after 30 days' notice in writing to the Developer at its sole option, may:
- (a) Discharge this Development Agreement and the existing Zone and provisions of the LUB shall apply;
 - (b) Exercise its rights under Section 5.1, above; or
 - (c) Take no action.
- 5.3 No Waiver. Any election by the Municipality to take no action on a breach of this Development Agreement by the Developer shall not bar the Municipality from exercising its rights under this Development Agreement on any other breach.
- 5.4 Expenses Incurred. Any expenses incurred by the Municipality in exercising its rights under Sections 5.1 and 5.2, or either of them, shall be paid by the Developer. Such expenses may include, but are not limited to, all reasonable solicitors' fees and disbursements incurred in terminating or discharging this Development Agreement. Such expenses shall be payable by the Developer to the Municipality as a debt and may be recovered from the Developer by direct suit. They shall form a charge upon the lands.

ARTICLE 6 - GENERAL

- 6.1 Severability. It is agreed the provisions of this Agreement are severable from one another and that the invalidity of one provision shall not prejudice the validity or enforcement of any other provision.

- 6.2 Governing Law. This Agreement and any disputes that may arise pursuant to it shall be governed by the laws of the Province of Nova Scotia.
- 6.3 Indemnification. The Developer shall at all times indemnify and save harmless the Municipality of the District of Barrington from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomever made, brought or prosecuted to the extent that they are based upon, occasioned by, or attributed to anything done or omitted to be done by the Developer, his servants, agents, employees, contractors or consultants in the fulfillment of any of his obligations under this Development Agreement.
- 6.4 Notice. Any notice to be given under this Development Agreement shall be made in writing and either served personally or forwarded by courier or by registered mail, postage prepaid, if to the Municipality to:
- Municipality of the District of Barrington
2447 Highway 3
PO Box 100
Barrington NS B0W 1E0
Attention: David Andrews, Development Officer
- And to the Developer to:
- Duramax Holdings Inc.
3412 Nova Scotia Trunk 3
Barrington Passage NS B0W 1G0
Attention: Tyler Nickerson, President
- 6.5 Headings. The headings used in this Development Agreement are for convenience only. If any of the headings are inconsistent with the provisions of this Development Agreement which it introduces, the provisions of the Development Agreement shall apply.
- 6.6 Entire Agreement. This Development Agreement constitutes the entire agreement and contract entered into by the Municipality and the Developer. No other agreement or representation, oral or written, shall be binding.
- 6.7 Binding Effect. This Development Agreement shall enure to the benefit of and be binding upon the parties to this Development Agreement and their respective successors, administrators, and assigns. This Agreement shall run with the land described in Schedule A and be binding upon the Developer, its leases and the occupiers of the Property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have properly executed this Agreement as of the day and year first above written.

Witness

DURAMAX HOLDINGS INC.

Per:

Name:

Title:

I/We have the authority to bind the corporation

Witness

MUNICIPALITY OF THE DISTRICT OF BARRINGTON

Per:

Name:

Title:

And:

Witness

Name:

Title:

I/We have the authority to bind the corporation

CANADA
PROVINCE OF NOVA SCOTIA

Affidavit of Status and Execution

I, Tyler Nickerson, of Shag Harbour, in the Province of Nova Scotia, make oath and say as follows:

1. That I am the President and Secretary of Duramax Holdings Inc. (the "Company") and have a personal knowledge of the matters herein described;
2. That the Company is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
3. That for the purposes of this my Affidavit, "Matrimonial Home" means the dwelling and real property occupied by a person and that person's spouse or domestic partner as their family residence and in which either or both of them have a property interest other than a leasehold interest;
4. That the lands described in the annexed instrument are not occupied by any shareholder as a Matrimonial Home nor is any shareholder entitled to use the lands as a Matrimonial Home and the lands have never been so occupied while any interest in the lands has been owned by the Company;
5. That I am an Officer of the Company, duly authorized to execute the annexed instrument for and on behalf of the Company;
6. That I have executed the annexed instrument for and on behalf of the Company and thereby bind the Company; and
7. That this affidavit is sworn for the purpose of registering the annexed instrument pursuant to sections 79(1) and 83 of the *Land Registration Act* and in compliance with the provisions of the *Matrimonial Property Act* and the *Vital Statistics Act*.

SWORN TO at _____, in the
Province of Nova Scotia, the ____ day of
_____, 2021, before me:

A Barrister, Commissioner of Oaths or
Notary Public

} _____
Tyler Nickerson

**CANADA
PROVINCE OF NOVA SCOTIA**

Affidavit of Execution

I, _____, of _____, in the Province of Nova Scotia, make oath and say as follows:

1. That _____ and I are _____ and _____, respectively, of the Municipality of the District of Barrington (the "Municipality"), and I have a personal knowledge of the matters herein described;
2. That _____ and I are duly authorized to execute the annexed instrument for and on behalf of the Municipality;
3. That we have executed the annexed instrument for and on behalf of the Municipality and thereby bind the Municipality; and
4. That this affidavit is sworn for the purpose of registering the annexed instrument pursuant to sections 79(1) and 83 of the *Land Registration Act*.

SWORN TO at _____, in the Province of Nova Scotia, the ____ day of _____, 2021, before me:

A Barrister, Commissioner of Oaths or Notary Public

} _____
Name:

SCHEDULE "A"
Property

Registration County: SHELBURNE COUNTY

Street/Place Name: HIGHWAY 3 HIGHWAY /BARRINGTON PASSAGE

Title of Plan: FINAL PLAN OF S/D SURVEY OF LOT 7, LOT 8 & PARCEL A BEING A S/D & CONSOLIDATION OF LANDS OF 3312662 NOVA SCOTIA LTD & LANDS OF DURAMAX HOLDINGS INC. [SEE LOT FORMATION NOTE] LOCATED AT CIVIC #3412 & 3418 TRUNK #3, BARRINGTON PASSAGE

Designation of Parcel on Plan: LOT 8

Registration Number of Plan: 116774598

Registration Date of Plan: 2020-08-10 12:02:21

Subject to an Easement/Right of Way in favour of Nova Scotia Power Inc. and described in a Grant of Easement document recorded at the Shelburne County Registry of Deeds recorded in Book 298 at Page 413.

Subject also to a 20 foot wide right-of-way for all purposes of access and egress, and an easement for all utilities of the owners of Lot No. 2 as described in a deed recorded at the Shelburne County Registry of Deeds recorded in Book 300 at Page 239.

*** 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: SHELBURNE COUNTY

Registration Year: 2020

Plan or Document Number: 116774598

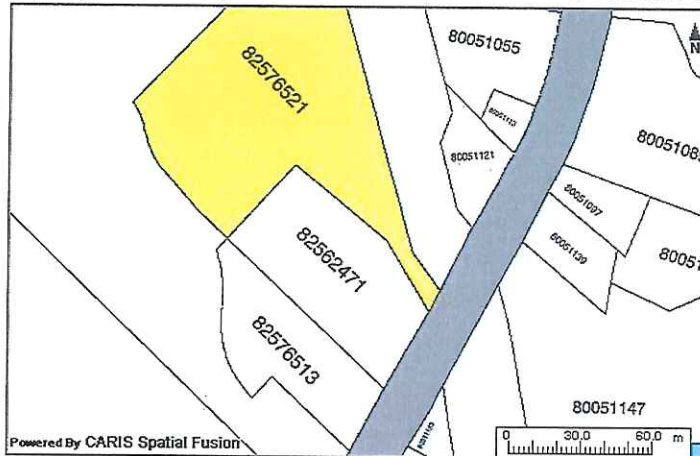
SCHEDULE "B"
Plans

See attached.



Property Online Map

Date: Feb 19, 2021 2:01:36 PM



PID: 82576521 **Owner:** DURAMAX HOLDINGS INC. **AAN:** 10260841
County: SHELBURNE COUNTY **Address:** HIGHWAY 3 BARRINGTON PASSAGE **Value:** \$351,100 (2021 COMMERCIAL TAXABLE)
LR Status: LAND REGISTRATION

The Provincial mapping is a graphical representation of property boundaries which approximate the size, configuration and location of parcels. Care has been taken to ensure the best possible quality, however, this map is not a land survey and is not intended to be used for legal descriptions or to calculate exact dimensions or area. The Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel [*Land Registration Act* subsection 21(2)]. THIS IS NOT AN OFFICIAL RECORD.

Property Online version 2.0

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