



**PUBLIC HEARING**  
**COUNCIL CHAMBERS & FACEBOOK LIVE**  
**MONDAY, MAY 6, 2024**  
**6:30 P.M.**

**Agenda**

1. Meeting Opening – Mayor Atkinson
2. Application from 438 Main Developments Ltd to amend the Development Agreement for a multi-unit residential development at 438 Main Street (PID 05079686):
  - a. Presentation of Development Agreement Amendment – Dawn Sutherland, Planner
  - b. Comments by Nick MacArthur
  - c. Public Input
  - d. Written Submissions Received – A/CAO Kerr
3. Adjournment

# Planning Report

27 March 2024



To: Middleton Planning Advisory Committee

From: Dawn Sutherland, LPP, MCIP  
Town Planner

Date: 27 March 2024 (date of PAC meeting)

Reference: Application for a Substantive Amendment to the Development Agreement for a multi unit residential development at 438 Main Street, Middleton, Nova Scotia, PID 05079686.

## Recommendation:

That Municipal Council **approve** the amendments to the development agreement for a multi unit residential development at 438 Main Street, Middleton, Nova Scotia, PID 05079686, which are substantively the same (save for minor differences in form) as the draft set out in the planning report dated 27 March 2024 and that Council give First Reading and authorize a Public Hearing.

	Description
<b>Plan Area:</b>	Town of Middleton
<b>Designation:</b>	General Commercial
<b>Zoning:</b>	General Commercial (GC)
<b>Wellfield:</b>	No
<b>Heritage:</b>	No
<b>PID:</b>	05079686
<b>Lot:</b>	C1A
<b>Total Area:</b>	31 724.21 ft <sup>2</sup>
<b>Site Visit:</b>	4 March 2024

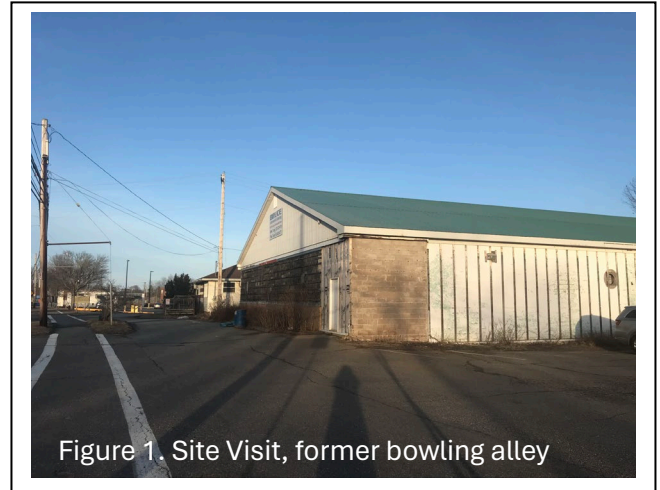
## Information:

On 5 September 2023, Council approved a development agreement for the construction of a four storey residential commercial mixed use building containing 230 square metres of at-grade commercial floor area, 36 residential dwelling units, and 58 parking spaces, with underground and grade-level parking. On 14 March 2024, the Town received an application from 438 Main Street Developments Limited for a substantive amendment (change) to the development agreement. The current proposal is a four-story multi-unit residential building with 38 units and a minimum of 50 parking spaces, with underground and grade-level parking.

The requested changes are:

- removal of the rooftop amenity space
- provision of amenities within the building
- removal of the commercial space on the ground floor
- two additional residential units
- reduction in the required number of parking spaces

Substantive amendments are considered significant changes to the development agreement. The current development agreement identifies substantive matters, such as changes to the permitted uses. For example, the removal of commercial space is considered a substantive change. Section 230 (7) of the *Municipal Government Act* requires a public hearing for substantive amendments. Requests for substantive amendments must go through the entire approval process again. Matters deemed substantive are listed in Part 8 of the current development agreement. A development agreement provides an approach to development control which is more flexible than traditional zoning mechanisms. When preparing the amendments, staff will refer to the evaluation criteria contained in the Town of Middleton Municipal Planning Strategy (MPS) and include the relevant items in the development agreement amendment.



The amendment request was precipitated by construction planning. Commercial spaces require higher ceilings than residential units, and the developer wished to keep 8 ft ceilings in the above ground floor residential units. A shortage of skilled labour and increasing costs of materials impacted the current proposal. Timber frame construction replaced concrete in construction drawings. The timber frame added extra height, which would have put the building above the maximum height of 13.5 m (~44.3 ft). As a result, the developers re-examined their proposal and have requested removal of the commercial space. The former commercial space area will be the location of two additional residential units and indoor amenity space.



Also, the request includes the removal of the rooftop amenity space and reduced parking. The developers related that with commercial vacancies downtown, it would be beneficial to the development to convert that space to a use that is more likely to be occupied (i.e., residential units). Creating an accessible rooftop area is significantly more costly than alternative roof structures as it includes an elevator shaft and additional measures to meet building code requirements. A rooftop amenity space would have seasonal use. The developers related that tenants would appreciate an indoor amenity space, such as a common room or board room.

### Background:

A site visit was carried out on 4 March 2024. The site is relatively flat with a small grassed area to the rear. There is a large parking lot in the west side yard. The building is close to the front lot line and located in the northwest portion of the 31 724.21 ft<sup>2</sup> lot. The site is between NAPA Auto Parts and a low rise structure used as the Middleton Medical Clinic. The building at 438 Main Street is currently vacant. A development permit for demolition (M24-006) was issued on 1 March 2024. As an aside, site preparation (e.g., removing asphalt, grading) does not require a development permit. It is the site of the former LMK Bowling Lanes,

which closed circa 2015-2016. The lot had been used on occasion by Bruce Ford for vehicle display but is now used by those visiting the hospital.

The area is mainly commercial and institutional in nature, with residential to the west of Jones Avenue. To the southwest is NAPA Auto Parts. Directly across the street is Fundy Spray Hotel and Kwik Way convenience store. To the northwest are three low density residential dwellings and the Orchard Queen Motel and RV Park. To the northeast is a prominent and tall building, which forms part of Bruce Ford dealership. To the east is Soldiers Memorial Hospital facilities. To the rear are low density residential dwellings along Ross Lane.

After receiving the application for a substantive amendment, correspondence was sent to those departments who had been notified during the initial application. Correspondence informed them of the proposed changes and provided an opportunity for input if the change caused new concerns.

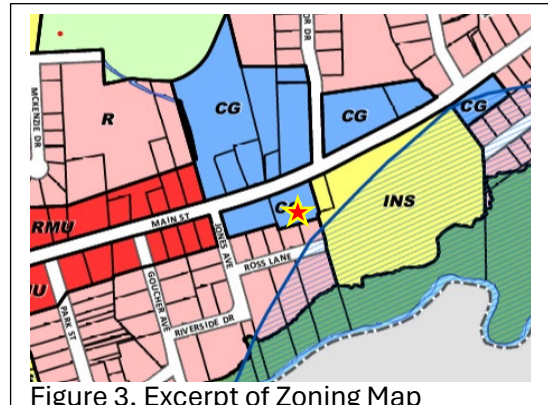


Figure 3. Excerpt of Zoning Map

**Analysis:**

The MPS enables a range of commercial uses to be allowed in the General Commercial (GC) zone “as of right” through a development permit. It also recognizes the benefits of allowing residential uses in the General Commercial (GC) zone. Certain uses residential uses are appropriate; however, there is a recognition that they will have the potential for greater impact. As such, these uses are permitted through the development agreement approval process.

Under Policy C14 of the Middleton MPS, as amended to December 2023, new multiple unit dwellings containing three or more units may be considered by development agreement. Policy C14 states:

*The conversion of existing dwellings, or the development of new multiple unit dwellings containing three (3) units or more and the development of new day nurseries, bed and breakfast uses, group homes, residential care facilities, boarding houses, and multiple dwellings on a single lot within the Commercial General (CG) Zone shall be considered only by Development Agreement.*

Implementation Policy IM12(c) confirms that Council shall consider new multiple unit dwellings containing three (3) units or more only by development agreement, pursuant to enabling policies contained in the MPS and subject to criteria contained in Policies IM15 and IM16 (note that the reference is to Policies IM16 and IM17 in the amended 2023 document). Current Policy IM15 states that:

*In considering entering into a Development Agreement, the Council shall have regard for those matters identified in Policies IM15 and IM16, as well as any criteria set out in other applicable policies of the Strategy. (note now IM16 and IM17).*

Implementation Policy IM16 identifies terms and conditions that may be included in the development agreement to ensure consistency with policies. Analysis is below as well as in Appendix A. Policy IM16 states:

*It shall be the intention of Council that a Development Agreement, made pursuant to the Municipal Government Act, may contain such terms and conditions that Council feels necessary, to ensure that the Development Agreement is consistent with the policies of this Strategy. To this end, the agreement may include, but is not limited to, some or all of the following:*

*(a) The specific use and size of the structure, either new, or an expansion of an existing structure;*

Comment: The footprint of the building has not changed. There is no increase in the size of the building. The use is for 38 residential units, with a minimum of nine being two bedroom units. The ground floor commercial and the rooftop amenity spaces have been removed.

*(b) The location of any structure within a development;*

Comment: The site plan has not changed. The building is located in the northeast corner of the lot. Originally, the waste receptible area was to be in the underground parking garage; however, it will likely be moved to grade to allow for the pick up by the large vehicle. A parking space will be used for this, which is considered in the reduced parking request. The development agreement sets out that there shall be no outside storage or garbage storage in the yard abutting a residential zone (Part 5.6.b). Part 5.6.h sets out that garbage holding areas should be contained within buildings or, if adjacent to a building, be designed with adequate screening. No changes to the development are required for the relocation of the waste receptible.

*(c) The percentage of land that may be built upon and the size of yards, courts or other open spaces*

Comment: The site plan sets out the yards (setbacks) and lot layout. Changes to the setbacks are substantive matters, which means should there be a need to move the building even a few feet, the developer would need to go through the entire amendment process again. On rare occasions during construction, there may be instances where a building may need to be moved a few feet to accommodate a previously unknown easement or service line or even footings that are misplaced. Minor changes to the setbacks will not have a negative impact on the form or function of the site or adversely impact the neighbourhood.

The following clause has been added to the development agreement to allow the Development Officer to determine, consider, and approve or deny minor changes in building setbacks or height without the need for an amendment to the development agreement or variance:

Notwithstanding 8.c., minor changes in building setbacks identified on the Layout Plan attached as Schedule "B"; and 5.2.d., minor changes in building height shall be at the sole discretion of the Development Officer and shall not constitute an amendment to this Agreement and will not require a variance procedure. The decision is not subject to appeal.

*(d) The maximum density of the population within the development;*

Comment: The maximum number of units is 38 dwelling units.

*(e) The architectural design or external appearance of structure, in particular, its compatibility with adjacent structures;*

Comment: There are no changes to the design requirements. Concept plans, prepared by an architect, have been provided and form part of the PAC presentation. Please note that balconies are shown facing the rear yard in the presentation. These balconies will be inset on the drawings issued for construction. Controlling the interior configuration of units is not necessary given the architectural controls, maximum number of units, and minimum of nine two bedroom units, set out in the development agreement. As such Schedule "C", has been revised to remove Middleton Pro Forma and drawing A 01 dated 7 November 2022 (floor plans).

*(f) The provision of services and utilities;*

Comment: Part 6 of the development agreement relates to servicing. The Director of Public Works reviewed the Servicing Schematic. He felt that the addition of a manhole was necessary. An amended Servicing Schematic is attached as Schedule "D-A1" of the development agreement.

*(g) Traffic generation, ingress to and egress from the site to abutting streets and parking;*

Comment:

Fathom Studio provided a traffic impact statement (dated 11 April 2023, as revised) for "transportation impacts anticipated from the proposed development of the site from a commercial leasing use, to a mid-rise (4 storey) building containing approximately 36 residential units, 30 underground parking spaces, and a small 2,500 ft<sup>2</sup> commercial space at the front of the building." They concluded that "Based on the review of the proposed development, overall volumes are expected to stay the same or decrease with the removal of the existing land use and addition of the residential development. There are no significant operational or geometric impediments to the development and traffic operations are expected to be maintained at a high level of service..." The site plan was based on the recommendations and includes parking areas. Part 6.d of the development agreement speaks to the requirement for permits for access and egress.

A revised traffic impact statement was not requested for the removal of the commercial space and the addition of two residential units. Residential development typically generates less traffic than commercial uses in the same space. For example, a coffee shop, will generate much higher traffic volumes throughout the day than most residential developments.

Part 8.f of the development agreement sets out that "Any reduction in the parking ratio of 1.0 (space per unit) including 2 Accessible parking spaces plus 2 spaces for the commercial use" is a substantive amendment. Commercial parking spaces will no longer be required.

The requirements of the Land Use By-law for residential development are 1.5 spaces per unit. Without the flexibility of a development agreement, the requirement would be 57 spaces. The intention is 50 spaces, which is reasonable in this setting (ratio of 1.3).

There is no change to the parking ratio proposed or the trigger for criteria for a substantive amendment regarding parking spaces. The building code determines the number of barrier-free spaces required, so the number of barrier-free spaces should be left to the building official to determine. Part 8(f) of the development agreement establishes that the provision of less than 38 parking spaces (ratio of 1 space per unit) shall be considered a Substantive Amendment to the development agreement.

*(h) The landscaping or buffering of developments that may include fencing, walkways, and outdoor lighting;*

Comment:

Landscaping requirements are set out in Part 5.6 of the development agreement. The site plan shows fencing (privacy screening) along the rear property line and walkways. Lighting is not shown but regulated under Part 5.6.d where any exterior lighting or illuminated signs shall be so arranged as to deflect light away from the adjacent residential zone.

*(i) Alteration of land levels;*

Comment: The development agreement does not regulate the alteration of land levels. The lands are relatively flat.

*(j) Open storage;*

Comment: Part 5.6.b sets out that there shall be no outside storage or garbage storage in the yard abutting a residential zone. No changes to this provision are proposed.

*(k) Public display of advertising;*

Comment: The development agreement does not contain specific provisions relating to advertising. Part 7 sets out that other relevant development control provisions in the Land Use By-law shall apply, which would include signage.

*(l) Integration of universal accessible design considerations for structure and site design and the provision of accessible parking spaces.*

Comment: The proposal will meet building code and barrier free parking requirements. Information on the [Rick Hanson Foundation website](#) states that "According to the Centre for Excellence in Universal Design, universal design (sometimes also called inclusive design or barrier-free design) is the design and structure of an environment so that it can be understood, accessed, and used to the greatest extent possible by all people regardless of their age or ability." For the purposes of this report, the requirements of the building code will regulate accessible design and energy efficiency.

*(m) Any other similar matter that may be addressed in a Land-Use By-law that Council feels is necessary, to ensure general compatibility of the use and structure with adjacent areas.*

Comment: No further matters were identified.

Policy IM17 establishes criteria that the Council shall have regard for when entering into development agreements. Please refer to Appendix A for comment on criteria.

Briefly, the development will be adequately served by and is not likely to strain the capacity of municipal water and sanitary sewer; however, the development agreement sets out that the Developer must confirm Town capacity. The storm sewerage is by way of catch basins, which are located in the Town right of way on Main Street and are maintained by the Town. As noted above, the Town will require the

addition of a new manhole in the Servicing Schematic. There are a 6" water, 12" sanitary sewer, and 12" storm sewer lines on Main Street.

The addition of 38 residential units will not strain the capacities of recreation facilities or parks. Given declining enrollment in rural areas, it is unlikely that Middleton Regional High School and Annapolis East Elementary School are over capacity. With respect to stored water capacity for fire protection, Middleton Fire Department's Tanker 21 has a 2x 2500 gallon dump tank, Engine 12 has a 800 gallon poly tank, and Engine 11 has a 830 gallon poly tank. There is a fire hydrant on Main Street approximately 82 ft to the east. The Middleton Fire Department participates in mutual aid response with several neighbouring fire departments. Reservoir storage will be increased with the planned replacement of the current reservoir. The layout, design, and separation distances must meet the requirements of the National Building Code. The heights of buildings in the area are varied, with single-storey homes and businesses as well as higher structures such as those abutting the Soldiers Memorial Hospital and the nearby Bruce Ford building (ground to peak). The development will not create major traffic problems, as per the traffic impact statement by Fathom Studio. Main Street is an arterial road, the highest classification within the Town. Consideration is required to be given to building design and provision of barriers, berms, fences, and/or landscaping as part of the residential development to minimize effects on adjacent land uses, as required by policy. The development agreement contains such provisions. Design and landscaping features aim to minimize impacts on adjacent land uses. The full list of the evaluation criteria for a development agreement is found in Appendix A of this report.

With respect to IM17B.ii, ii) the adequacy of sewer and groundwater to support the proposed density of development, it is the responsibility of the Developer to confirm the capacity of Town services. The Developer is aware; however, there is a new provision in the Development Agreement that clarifies the requirement. The amending development agreement has the following provision in Part 6.f. "That prior to the issuance of a Development Permit, the Developer shall confirm, to the satisfaction of the Town, that the Town has water and sanitary and storm sewer capacity for the Development." It should be noted that the sewage treatment plant is not at capacity and there have been no reported Town water shortages affecting residents.

### **Statements of Provincial Interest:**

The purpose of the Statements of Provincial Interest (SPI) is to protect the common public interest and encourage sustainable development in municipalities. The SPI are policy statements adopted by the provincial government under the powers of the *Municipal Government Act* (MGA s.193). They are set out in Schedule "B" of the MGA and came into effect on April 1, 1999. Legislation requires that municipal planning documents are "reasonably consistent" with the SPI. As such, the following comments are offered with respect to the consistency of the development with the SPI:

1. Drinking Water: The development is not in a Wellfield and does not pose a threat to the water supply, given its residential use.
2. Flood Risk Areas: Not in an identified flood risk area.
3. Agricultural Land: Not considered agricultural land or impacting agricultural lands.

4. Infrastructure: The proposal makes use of existing municipal water and sanitary sewer systems with no demand for new municipal infrastructure. Development on this property is considered brownfield development. There is no “leap frog” development proposed.

5. Housing: Provides additional housing in the form of a mid-rise multi unit building. This housing form provides for a wider range of housing options in Middleton. The MGA and MPS policies support the development of multi unit residential dwellings on this site.

The proposed development is reasonably consistent with the SPI.

**Options:**

1. Recommend that Council approve the amendment to the development agreement.
2. Recommend that Council approve the amendment to the development agreement, subject to specific additional conditions.
3. Request more information from staff and bring the amendment to the development agreement back to PAC.
4. Recommend that the Council not approve the amendment to the development agreement because it violates the intent of the MPS for the following reasons: .... (how it violates the intent).
5. Other.

**Conclusion:**

In the opinion of Planning Staff, the proposed amendment to the development agreement for 438 Main Street meets the intent of the Municipal Planning Strategy, according to the requirements as set out in the document. The Town is advised to enter into the amended development agreement with 438 Main Developments Limited to ensure that the four-story multi-unit residential building with 38 units exhibits due regard for the abutting existing residential, commercial, and institutional uses.

**Staff Recommendation to PAC:**

Option 1. The recommendation of Staff is that the Council is advised to approve the amendments and enter into the amending development agreement attached to this staff report between 438 Main Developments Limited and the Town of Middleton with respect to allowing for a multi unit residential development at 438 Main Street, Middleton, Nova Scotia, PID 05079686, subject to the terms and conditions included in the amending Agreement.

Based upon staff's recommendation, the following motion for PAC is suggested:

**Proposed Motion for PAC:**

*Be it resolved THAT* the Planning Advisory Committee recommends that Council approve the amendments to the development agreement for a multi unit residential development at 438 Main Street, Middleton, Nova Scotia, PID 05079686, which are substantively the same (save for minor differences in form) as the draft set out in the planning report dated 27 March 2024 and that Council give First Reading and authorize a Public Hearing.

Based upon staff's recommendation for PAC, the following motion for Council is suggested:

**Proposed Motion for Council, First Reading:**

*Be it resolved THAT* Council gives First Reading to and authorizes a Public Hearing for the amendments to the development agreement for a multi unit residential development at 438 Main Street, Middleton, Nova Scotia, PID 05079686, which are substantively the same (save for minor differences in form) as the draft set out in the planning report dated 27 March 2024.

Appendices:

Appendix A: Summary of Evaluation Criteria

Appendix B: Amending Development Agreement

Appendix C: Consolidating Development Agreement (internal use only - to show changes)

Appendix D: Original Development Agreement

**Appendix A: Summary of Evaluation Criteria**

<p><b>Policy IM16</b>  It shall be the intention of Council that a Development Agreement, made pursuant to the <u>Municipal Government Act</u>, may contain such terms and conditions that Council feels necessary to ensure that the Development Agreement is consistent with the policies of this strategy. To this end, the agreement may include, but is not limited to, some or all of the following.</p>	
a. The specific use and size of the structure, either new or an expansion of an existing structure;	Complies
b. The location of any structure within a development;	Complies
c. The percentage of land that may be built upon and the size of yards courts or other open spaces;	Complies (not percentage but location)
d. The maximum density of the population within the development;	Complies (max number of units on lot)
e. The architectural design or external appearance of structure, in particular, its compatibility with adjacent structures;	Complies
f. The provision of services and utilities;	Complies – note confirmation of capacity by Developer is set out in development agreement
g. Traffic generation, ingress to and egress from the site to abutting streets and parking;	Complies
h. The landscaping or buffering of developments that may include fencing, walkways, and outdoor lighting;	Complies
i. Alteration of land levels	Not applicable
j. Open storage;	Complies
k. Public display of advertising;	Complies (as per LUB)
<p><b>Policy IM17</b>  In considering amendments to the zoning in the By-law or entering into Development Agreements, in addition to all other criteria as set out in various policies of this planning strategy. Council shall have regard for the following matters.</p>	
a. That the proposal is in conformance with the intents of this Strategy and with the requirements of all other Town By-laws and regulations;	Meets the intent of the MPS
b. That the proposal is not premature or inappropriate by reason of:	
i) the financial capability of the Town to absorb any costs relating to the development;	Conforms
ii) the adequacy of sewer and groundwater to support the proposed density of development;	DA requires confirmation prior to the issuance of a development permit.
iii) the adequacy and proximity of school, recreation, and other community facilities;	Conforms
iv) the adequacy of road networks adjacent to, or leading to development;	Conforms. No changes from original design.

v)	the potential for the contamination of water courses or the creation of erosion or sedimentation	Conforms
vi)	stored water capacity for fire protection	Conforms (Middleton Fire Dept plus Mutual Aid)
vii)	the potential for damage to or destruction of historical buildings and sites	Conforms
c.	That controls are contained in a Land Use By-Law or a Development Agreement so as to reduce conflict between the development and any other adjacent or nearby land use by reason of:	
i)	Type of use;	Part 2 Use of Lands
ii)	Emissions, including air and water pollutants and noise;	N/A Residential use is not a nuisance. (Note: Part 5.6.a.ii Opaque fence in rear yard between parking and rear yards of homes on Ross Lane)
iii)	Height, bulk, and lot coverage of the proposed building;	Part 3 Site Plan and Layout Plan, Sch B
iv)	Traffic generation, access to and egress from the site, and parking;	Part 3 Site Plan and Layout Plan, Sch B Part 6.d.i Servicing, Access and Egress
v)	Open storage;	Part 5.6.b Landscaping Requirements
vi)	Signs;	Part 7 7. All Other Matters Addressed in the Land Use By-law
vii)	Similar matters of planning concern.	None
d.	Suitability and development costs of the proposed site in terms of steepness of grades, soil and geological conditions, marshes, swamps or bogs, and proximity of highway ramps, railway rights-of-way, and other nuisance factors.	Suitable Relatively flat, no watercourses on or abutting lot, no other nuisance factors.
e.	Provision is made for buffering, landscaping, screening, and access control, to reduce potential incompatibility with adjacent land uses and traffic.	Part 3 Site Plan and Layout Plan, Sch B Part 5 Building Design

Appendix B: Amending Development Agreement

Amending Development Agreement

THIS AMENDING DEVELOPMENT AGREEMENT is made this \_\_\_ day of \_\_\_\_\_ A.D., 2024:

BETWEEN

Town of Middleton, a municipal body corporate, pursuant to the Municipal Government Act of Nova Scotia, hereinafter called the "Town"

OF THE FIRST PART

and

438 Main Developments Limited., a body corporate of Middleton, Nova Scotia, hereinafter called the "Developer"

OF THE SECOND PART

WHEREAS the Developer is the owner of certain lands situate in the Town of Middleton known as civic 438 Main Street, identified as Nova Scotia Land Information PID 05079686, herein after called "the Lands", and described in Schedule "A" of this Agreement;

AND WHEREAS on 5 September 2023 Town Council approved an application to enter into a development agreement to allow for the construction of a four storey residential commercial mixed use building containing 230 square metres of at grade commercial floor area, 36 residential dwelling units, and 58 parking spaces on the Lands (file no.M2022-004-DA), which said Development Agreement was registered at the Land Registration Office in Lawrencetown on X March 2024 as Document Number CCCC in Book Number CCCC at Pages CC to CC (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested an amendment to the Original Agreement to allow for the construction of a four storey residential building containing 38 residential dwelling units and 50 parking spaces on the Lands pursuant to Section 225 of the Municipal Government Act and pursuant to Part 2.4 of the Town of Middleton Municipal Planning Strategy and Section 2.5 of the Town of Middleton Land Use By-law (hereinafter called the "Amending Agreement");

AND WHEREAS the Amending Agreement has been considered at a Public Hearing and approved by a majority vote of the Town Council on DATE pursuant to requirements of the Municipal Government Act (file no. 2024-00X-DA);

NOW THEREFORE in consideration of the various covenants and benefits hereinafter set out in this Agreement, the parties hereto agree as follows:

1. Except where specifically varied by this Amending Agreement, all other conditions and provisions of the Original Agreement shall remain in effect.
2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Amending Agreement and the Original Agreement.
3. The Original Agreement shall be amended as follows:

**3.1**

1. Use of the Lands

DELETE

The Lands shall be used for the construction of a four storey commercial residential mixed use building containing approximately 2,500 square feet of at-grade commercial floor area, 36 residential dwelling units with a minimum of nine (9) being two-bedroom and 58 parking spaces, two (2) of which shall meet Accessible Parking standards.

And INSERT

The Lands shall be used for the construction of a four storey residential building containing 38 residential dwelling units with a minimum of nine (9) being two-bedroom and 50 parking spaces.

**3.2**

5. Building Design

DELETE

The four-storey commercial residential mixed use building shall be constructed in general conformity with the Massing Model and Floor Plans attached as Schedule "C" of this Development Agreement and the following built form standards:

And INSERT

The four-storey residential building shall be constructed in general conformity with the Massing Model and Floor Plans attached as Schedule "C" of this Development Agreement and the following built form standards:

**3.3**

5.5 Amenity Space Requirements

DELETE

- (a) The building shall provide amenity space, at a rate of 5.0m<sup>2</sup> per dwelling unit, for use by the building's residents. No less than 50% of all required amenity space shall be provided within the building. Rooftop uses are permitted amenity spaces if they are fully accessible by residents of the building.

and INSERT.

- (a) The building shall provide amenity space, at a rate of 3.0m<sup>2</sup> per dwelling unit, for use by the building's residents. Amenity space, or a portion thereof, may be provided within the building. Rooftop uses are permitted amenity spaces if they are fully accessible by residents of the building.

### **3.4**

#### 5.5 Amenity Space Requirements

- (c) ~~AFTER~~ All At-grade residential units must have front door walk-out access for all units fronting streetlines.  
And ~~BEFORE~~ These units shall use walls, landscape buffers, fencing or grade changes to provide privacy from adjacent sidewalks

DELETE

These groundfloor units shall have at least 6m<sup>2</sup> of landscape amenity space per unit.

### **3.5**

#### 5.5 Amenity Space Requirements

DELETE

- (d) The Rooftop of the building shall include no less than 100m<sup>2</sup> of common amenity space.

### **3.6**

#### 5.6 Landscape Requirements

DELETE

- (f) Each commercial unit fronting on a street shall be connected to the street sidewalk by a min 1.8m wide sidewalk.

### **3.7**

#### 6 Servicing

INSERT

- (e) The Town shall not be responsible for providing water service to the Lands that meets the fire pressure requirements for a sprinkler system.
- (f) Prior to the issuance of a Development Permit, the Developer shall confirm, to the satisfaction of the Town, that the Town has water and sanitary and storm sewer capacity for the Development.

### **3.8**

#### 8 Matters Deemed Substantive

DELETE

- (e) Any increase to the maximum number of 36 dwelling units;
- (f) Any reduction in the parking ratio of 1.0 (space per unit) plus 2 spaces for the commercial use;

and INSERT

- (e) Any increase to the maximum number of 38 dwelling units;
- (f) Any reduction in the parking ratio of 1.0 (space per unit);

### **3.9**

#### 8 Matters Deemed Substantive

INSERT

AFTER (g)... creating or expanding a public street over the Lands and

BEFORE All other matters shall be considered non substantive, including discharge of this Development Agreement, and may be amended by resolution of Council:

Notwithstanding 8.c., minor changes in building setbacks identified on the Layout Plan attached as Schedule "B"; and 5.2.d., minor changes in building height shall be at the sole discretion of the Development Officer and shall not constitute an amendment to this Agreement and will not require a variance procedure. The decision is not subject to appeal.

### **3.10**

Schedule "C", Building Massing and Floor Plans

DELETE title

Schedule "C", Building Massing and Floor Plans

and INSERT title

Schedule "C", Building Massing

DELETE pages

Middleton Pro Forma and A 01, dated November 7, 2022

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

SIGNED, SEALED AND DELIVERED

In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Per 438 Main Developments Limited

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Sylvester Atkinson, Mayor  
Town of Middleton

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Ashley Crocker,  
Clerk and Chief Administrative Officer  
Town of Middleton

PROVINCE OF NOVA SCOTIA  
COUNTY OF ANNAPOLIS

On this \_\_\_\_ day of \_\_\_\_\_, A.D. 2024, before me, personally came and appeared \_\_\_\_\_, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in their presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF ANNAPOLIS

On this \_\_\_\_ day of \_\_\_\_\_, A.D. 2024, before me, personally came and appeared \_\_\_\_\_, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that, Mayor Sylvester Atkinson and Ashley Crocker Clerk and Chief Administrative Officer of the Town of Middleton, signed the same and affixed the seal of the said Municipality thereto in their presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

Consolidated Development Agreement  
(for internal use only)

THIS DEVELOPMENT AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_  
A.D., 20\_\_\_\_\_:

BETWEEN

Town of Middleton, a municipal body corporate, pursuant to the Municipal Government Act of Nova Scotia, hereinafter called the "Town"

OF THE FIRST PART

and

438 Main Developments Ltd., a body corporate of Middleton, Nova Scotia, hereinafter called the "Developer"

OF THE SECOND PART

WHEREAS the Developer is the owner of certain lands situate in the Town of Middleton known as civic 438 Main Street, identified as Nova Scotia Land Information PID 05079686, herein after called "the Lands", and described in Schedule "A" of this Agreement;

AND WHEREAS the Developer has submitted a proposal for the construction of a four ~~storey~~ residential ~~commercial mixed use~~ building containing ~~230 square metres of at-grade commercial floor area, 36-38~~ residential dwelling units and ~~5058~~ parking spaces as generally described in an application submission by Fathom Studio dated October 13, 2022, herein after called "the Development";

AND WHEREAS the Developer has requested that the Town enter into this Development Agreement pursuant to Section 225 of the Municipal Government Act so that the Developer may develop and use the Lands in the manner specified herein;

AND WHEREAS Part 2.4 of the Town of Middleton Municipal Planning Strategy requires that approval of new multiple unit residential uses within the Commercial General Generalized Future Land Use Designation be considered by Development Agreement;

AND WHEREAS the Development has been considered at a Public Hearing and approved by a majority vote of the Town Council on September 5, 2023 pursuant to requirements of the Municipal Government Act;

NOW THEREFORE in consideration of the various covenants and benefits hereinafter set out in this Agreement, the parties hereto agree as follows:

1. Lands Subject to the Agreement

Lands subject to this Agreement shall include all those lands known as civic 438 Main Street, Middleton, identified as Nova Scotia Land Information PID 05079686, and described in the attached Schedule "A" of this Development Agreement.

2. Use of the Lands

The Lands shall be used for the construction of a four storey ~~commercial residential mixed-use~~ building containing ~~approximately 2,500 square feet of at-grade commercial floor area, 3638~~ residential dwelling units with a minimum of nine (9) being two-bedroom and ~~58-50~~ parking spaces.

3. Site Plan and Layout Plan

The Lands shall be developed in general conformity with the Site Plan and Layout Plan attached as Schedule "B" of this Development Agreement.

4. Definitions

Unless otherwise defined in this Development Agreement, all words used herein shall have the same meaning as defined in the Middleton Land Use By-Law. Definitions in this Development Agreement which are not included in Part 3 of the Middleton Land Use By-law:

**STREETLINE GRADE** - means the elevation of a ~~streetline~~ at a point that is perpendicular to the horizontal midpoint of the ~~streetwall~~. Separate ~~streetline~~ grades shall be determined for each ~~streetwall~~ segment that is greater than 12 metres in width or part ~~thereof~~.

**STREETWALL** - means the wall of a building or portion of a wall facing a ~~streetline~~ that is below the height of a specified ~~stepback~~, which does not include minor recesses for elements such as doorways or intrusions such as bay ~~windows~~;

**STREETWALL HEIGHT** - means the vertical distance between the top of the ~~streetwall~~ and the ~~streetline~~ grade, extending across the width of the ~~streetwall~~;

**STREETWALL SETBACK** - means the distance between the ~~streetwall~~ and the ~~streetline~~;

**STEPBACK** - means a specified horizontal recess from the top of a streetwall, which shall be unobstructed from the streetwall to the sky except as otherwise specified.

## 5. Building Design

The four-storey commercial-residential mixed-use building shall be constructed in general conformity with the Massing Model and Floor Plans attached as Schedule "C" of this Development Agreement and the following built form standards:

### 5.1 Building Materials

- (i) The following architectural materials are prohibited:
  - i. vinyl siding;
  - ii. plastic;
  - iii. plywood;
  - iv. unfinished concrete;
  - v. exterior insulation and finish systems where stucco is applied to rigid insulation; and
  - vi. darkly tinted or mirrored glass, except for spandrel glass panels.

### 5.2 Height and Stepbacks

- (a) The maximum Streetwall Height is 11.5m.
- (b) A minimum 2.5m Streetwall Setback shall apply to the fourth storey above the Streetwall Height.
- (c) The Streetwall Width may be reduced to no less than 70% of the width of the building abutting a streetline, allowing the midrise portion of the buildings to extend to the ground.
- (d) The maximum height of the building (excluding encroachments) is 13.5m.

### 5.3 Permitted Encroachments

- (a) Eaves, gutters, down spouts, cornices and other similar features shall be permitted encroachments into a required Streetwall Setback, Streetwall Stepback or separation distance to a maximum of 0.6 metres.
- (b) Balconies shall be permitted encroachments into a Streetwall Setback, Streetwall Stepback or separation distance, at or above the level of the second storey of a building, provided that the protrusion of the balcony is no greater than 2 metres from the building face and the aggregate length of such balconies does not exceed 50% of the horizontal width of that building face.

- (c) Notwithstanding (b) above, the rear of the building shall not permit projecting balconies. All balconies in the rear shall be inset.
- (d) Underground parking structures are not required to meet the minimum front, side or rear setbacks, providing they do not protrude more than 0.6 metres above the average finished grade in any front, side or rear yard.
- (e) The following are permitted encroachments to the height limit of 13.5m:
  - i. Rooftop Cupolas;
  - ii. Clear glass railing systems;
  - iii. Elevator or stair enclosures;
  - iv. Parapets;
  - v. Mechanical penthouses;
  - vi. Skylights;
  - vii. Solar collectors;
  - viii. Clock or bell towers;
  - ix. Landscape features like arbours, trees, planters, shade structures, flagpoles, etc.

#### 5.4 Building Articulation

- (a) Building massing should be varied by employing variations to architectural style such as wall breaks, facade materials, recessed and projection areas, roof changes, distinct colour schemes and roof treatments.
- (b) Streetwalls that abut a front yard, shall be divided into distinct sections no less than 12 metres in width, extending from the ground to at least one floor below the top of the Streetwall.
- (c) Each distinct section required under Subsection (b) shall be differentiated from abutting distinct sections by using a minimum of two of the following methods:
  - i. different colours;
  - ii. different materials;
  - iii. different textures;
  - iv. living walls;
  - v. projections not less than 0.15m (1') deep; or
  - vi. recesses not less than 0.15m (1') deep.
- (d) Pedestrian entrances in the Streetwall shall be distinguished from the Streetwall by using a minimum of two of the following methods:
  - i. different colours;
  - ii. different materials;
  - iii. projections not less than 0.15m (1') deep;
  - iv. recesses not less than 0.15m (1') deep;
  - v. a change in height; or
  - vi. a change in the roofline.

## 5.5 Amenity Space Requirements

- (a) The building shall provide amenity space, at a rate of 53.0m<sup>2</sup> per dwelling unit, for use by the building's residents. ~~No less than 50% of all required~~ amenity space, ~~or a portion thereof, shall may~~ be provided within the building. Rooftop uses are permitted amenity spaces if they are fully accessible by residents of the building.
- (b) Residential uses shall have direct access to the exterior ground level separate from any non-residential use.
- (c) All At-grade residential units must have front door walk-out access for all units fronting streetlines. ~~These groundfloor units shall have at least 6m<sup>2</sup> of landscape amenity space per unit.~~ These units shall use walls, landscape buffers, fencing or grade changes to provide privacy from adjacent sidewalks.
- ~~(d) The Rooftop of the building shall include no less than 100m<sup>2</sup> of common amenity space.~~

## 5.6 Landscape Requirements

- (a) Where the site abuts an existing residential zone, a minimum landscape buffer of 2m shall be provided. The landscape buffer shall include:
  - i. 50mm caliper trees at a rate of one per 4m of abutting rear yard length. Spacing can be random.
  - ii. A 1.83m high opaque fence must be constructed along all rear lot boundaries between this site and properties fronting on Ross Lane. Preference shall be given to a wood fence. Fences shall either be built 1m off the property line so they can be maintained, or a maintenance agreement shall be secured with the adjacent property owners so that the fence can be periodically maintained.
  - iii. The buffer shall be planted with trees, perennials, annuals and/or woody shrubs.
- (b) There shall be no outside storage or garbage storage in the yard abutting a residential zone.
- (c) No additional site runoff may be directed to neighbouring properties.
- (d) Any exterior lighting or illuminated signs shall be so arranged as to deflect light away from the adjacent residential zone.
- (e) Invasive or highly toxic plant species are prohibited as soft landscaping material. Native plants are preferred.
- ~~(f) Deleted. Each commercial unit fronting on a street shall be connected to the street sidewalk by a min 1.8m wide sidewalk.~~
- (g) Shrub beds shall be planted at not less than 2m<sup>2</sup> for every 500m<sup>2</sup> of ground floor area of the building. Stormwater gardens can be considered as part of this calculation. Rooftop plantings may be used to meet this requirement.

- (h) Garbage holding areas should be contained within buildings or, if adjacent to a building, be designed with adequate screening. In no case shall garbage containers be left exposed to the street. These areas are to be properly ventilated, enclosed behind operable doors and equipped for full sanitary management.

## 6. Servicing

- (a) The provision of sanitary sewer, storm sewer and domestic water services shall be constructed in general conformity with the Servicing Schematic attached as Schedule "D" of this Development Agreement.
- (b) The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Town and other approval agencies.
- (c) All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Development Agreement or other approval agencies.
- (d) Access and Egress
  - i. The Developer must submit current permits from Nova Scotia Department of Public Works or any successor body, or the relevant Traffic Authority, to the Town before receiving any development or building permits for uses enabled by this Agreement.
- (e) The Town shall not be responsible for providing water service to the Lands that meets the fire pressure requirements for a sprinkler system.
- (e)(f) Prior to the issuance of a Development Permit, the Developer shall confirm, to the satisfaction of the Town, that the Town has water and sanitary and storm sewer capacity for the Development.

## 7. All Other Matters Addressed in the Land Use By-law

In addition to those requirements specifically addressed in Paragraphs 1 through 6 inclusive of this Development Agreement all other relevant development control provisions contained in the Middleton Land Use By-law shall apply.

## 8. Matters Deemed Substantive

The following matters shall be considered substantive and may only be considered by amendment of this Development Agreement:

- (a) Any change to the uses permitted pursuant to Paragraph 2 of the Agreement;
- (b) Any change in the Building Design standards identified in Paragraph 5 of the Agreement;
- (c) Any change in building setbacks identified on the Layout Plan attached as Schedule "B";
- (d) The provision of less than 25% of the dwelling units as 2-bedroom or more;
- (e) Any increase to the maximum number of 36-38 dwelling units;
- (f) Any reduction in the parking ratio of 1.0 (space per unit) plus 2 spaces for the commercial use;
- (g) Any alterations to the lot configuration that would result in a reduced lot area, except as may be required by the road authority for the purpose of creating or expanding a public street over the Lands.

Notwithstanding 8.c., minor changes in building setbacks identified on the Layout Plan attached as Schedule "B"; and 5.2.d., minor changes in building height shall be at the sole discretion of the Development Officer and shall not constitute an amendment to this Agreement and will not require a variance procedure. The decision is not subject to appeal.

All other matters shall be considered non substantive, including discharge of this Development Agreement, and may be amended by resolution of Council.

## General Provisions

9. The Town does not make any representations to the Developer about the suitability of the Lands for the development proposed by this Agreement. The Developer assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development;
10. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Development Agreement.
11. Subject to the provisions of this Development Agreement the Developer shall observe all related ordinances, by-laws and regulations of the Town and nothing in this Development Agreement shall exempt the Developer from obtaining and complying with any and all permits or approvals required by Provincial or Federal laws or regulations.

12. This Development Agreement shall be filed with the Registry of Deeds at Lawrencetown, in the County of Annapolis and shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Development Agreement until this Development Agreement is discharged by the Town.
13. The provisions of this Development Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforceability of any other provision.
14. Where the provisions of this Development Agreement conflict with those of any by-law of the Town's applicable to the Lands (other than the Land Use By-law to the extent varied by this Development Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail. Where the written text of this Development Agreement conflicts with information provided in the Schedules attached to this Development Agreement, the written text of this Development Agreement shall prevail.
15. The Developer shall be liable for any damage caused to public or private property by Developer or any contractor or other individual doing work related to the development. The Developer shall indemnify the Town and save it harmless from any claim, cause of action, or liability in any way relating to the development. The Developer shall obtain and maintain in force throughout the course of construction on the development, liability insurance coverage to insure the responsibilities which the Developer is assuming in this section.
16. 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 responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Town's Director of Public Works.
17. The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to the exterior of the building, fencing, walkways, 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 and ice control, salting of walkways and driveways.
18. The Developer shall sign this Agreement within 180 calendar days of 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 or the unexecuted Agreement shall be null and void;

19. In the event that development on the Lands has not commenced within three (3) years from the date of registration of this Development Agreement at the Registry of Deeds, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law. For the purpose of this section, commencement of development shall mean the construction of foundation footings and walls pursuant to the Site Plan attached as Schedule "B" of this Development Agreement.
20. Upon the breach by the Developer of the terms or conditions of this Development Agreement, the Town may:
- Apply for an injunction or injunction type relief; or
  - Prosecute under the Municipal Government Act, Land Use By-law or Building By-law, and/or Building Code Act;
  - Sue for specific performance of any terms or conditions; or
  - Sue for breach of contract; or
  - Discharge this Development Agreement; or
  - After 30 days' notice in writing, enter the Lands and perform any obligation with which the Developer has failed to comply strictly;
  - Undertake any remedies permitted by the Municipal Government Act;
  - Take no action but by taking no action on any breach or violation shall not bar the Town from exercising its rights under the Development Agreement for any other or a subsequent or continuing breach or violation of the same nature; or
  - Any combination of the above.
21. Any expenses incurred by the Town in exercising its rights under Paragraphs 16 and 20 shall be paid by the Developer to the Town. Such expenses may include, but are not limited to, costs incurred in returning property owned by the Town, or the Lands, to their original condition before the beginning of work on the development, costs incurred for entry on the Lands and performance of the Developer's obligations, and all solicitors' fees and disbursements incurred in terminating or discharging this Development Agreement. Such expenses shall be payable by the Developer to the Town as a debt and may be recovered from the Developer by direct suit. They shall form a charge upon the Lands. The Developer shall pay interest on any sum so expended by the Town at the same monthly rate charged by the Town for tax arrears on the outstanding balance from time to time. Such interest shall be treated as an expense.
22. The Developer warrants that the Developer has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance. No other entity has an interest in the lands which would require their signature on this Development Agreement to validly bind the lands or the Developer has obtained the approval of every other entity which has an interest in the lands whose authorization is required for the Developer to sign this Development Agreement to validly bind the lands. The Developer has taken all steps necessary to, and it has full authority to, enter this Development Agreement.

23. 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 Town to:

Town of Middleton  
131 Commercial Street  
Middleton, NS  
B0S 1P0  
Attention: Chief Administrative Officer

And to the Developer to:

438 Main Developments Limited  
90 Commercial Street  
Middleton, NS  
B0S 1P0  
Attention: Justin Barker

24. This Development Agreement may be discharged in accordance with the Agreement or by mutual consent of the Town and the Developer at any time.
25. Costs associated with the recording of this Development Agreement and all other aspects of processing this Development Agreement shall be the responsibility of the Developer.
26. This Development Agreement constitutes the entire agreement and contract entered into by the Town, the Developer. No other agreement or representation, oral or written, shall be binding.

THIS DEVELOPMENT AGREEMENT shall ~~enure~~ to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, agents, successors and assigns.

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

SIGNED, SEALED AND DELIVERED

In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Per 438 Main Developments Limited

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Per 438 Main Developments Limited

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Sylvester Atkinson, Mayor  
Town of Middleton

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Ashley Crocker, Chief Administrative Officer  
Town of Middleton

Schedule "A", The Lands

ALL that certain piece and parcel of land situate, lying and being at Middleton, Annapolis County, Nova Scotia, more particularly bounded and described as follows:

BEGINNING at a stake on the South side of Main Street and at the Northwest corner of Lot 45 of the Dodge and Dowell Subdivision;

THENCE Southerly along the West side of Lot 45 a distance of 152.11 feet to a survey marker in the North side of Lot 50;

THENCE South 37 degrees 39 minutes 20 seconds East a distance of 7.89 feet to a survey marker;

THENCE South 52 degrees 20 minutes 40 seconds West a distance of 10.00 feet to a survey marker;

THENCE South 37 degrees 39 minutes 20 seconds East a distance of 18.86 feet to a survey marker;

THENCE South 52 degrees 41 minutes 10 seconds West a distance of 186.41 feet to a survey marker;

THENCE North 37 degrees 33 minutes 30 seconds West a distance of 25.48 feet to a survey marker;

THENCE Northerly along the East side of Lot 25 and Lot 22 a distance of 130.34 feet to a stake set on the South side of Main Street;

THENCE in an Easterly direction along the South side of Main Street a distance of 197.27 feet to the PLACE OF BEGINNING.

BEING AND INTENDED TO BE Lot C1 on a Plan of Consolidation prepared by Derik R. DeWolfe, N.S.L.S. Dated August 21, 1987 and approved for subdivision purposes by the Town of Middleton on September 3, 1987 as plan 1975. Lot C1 is a consolidation of Lot 43 and Lot 44 of the Dodge and Dowell Subdivision and a Northerly portion of the McKenzie Avenue Lot; bearings and distance for these lots are taken from the Plan of Dodge and Dowell Subdivision. Lot C1 also included Lot A on a Plan of Consolidation prepared by James B. Gillis, N.S.L.S. dated May 2, 1980 and which was approved by the Town of Middleton on June 20, 1980 and which Plan is on file at the Registry of Deeds, Lawrencetown, Nova Scotia under Plan No. 1663; bearings and distances for Lot A are taken from the Gillis Plan; Lot C1 is also a consolidation of the northerly portion of Lot 48 and Lot 49 of the Dodge and Dowell Subdivision and a Southerly portion of the MacKenzie Avenue Lot into Lot C; bearing and distances for Lot C are taken from the DeWolfe Plan.

Schedule "B", Site Plan and Layout Plan





fathom.co.uk  
 1 Star Lane  
 Dartmouth, NS  
 EX14 7JF

DATE: 10/01/2024

BY: [Signature]

FOR: [Signature]

PROJECT: [Signature]

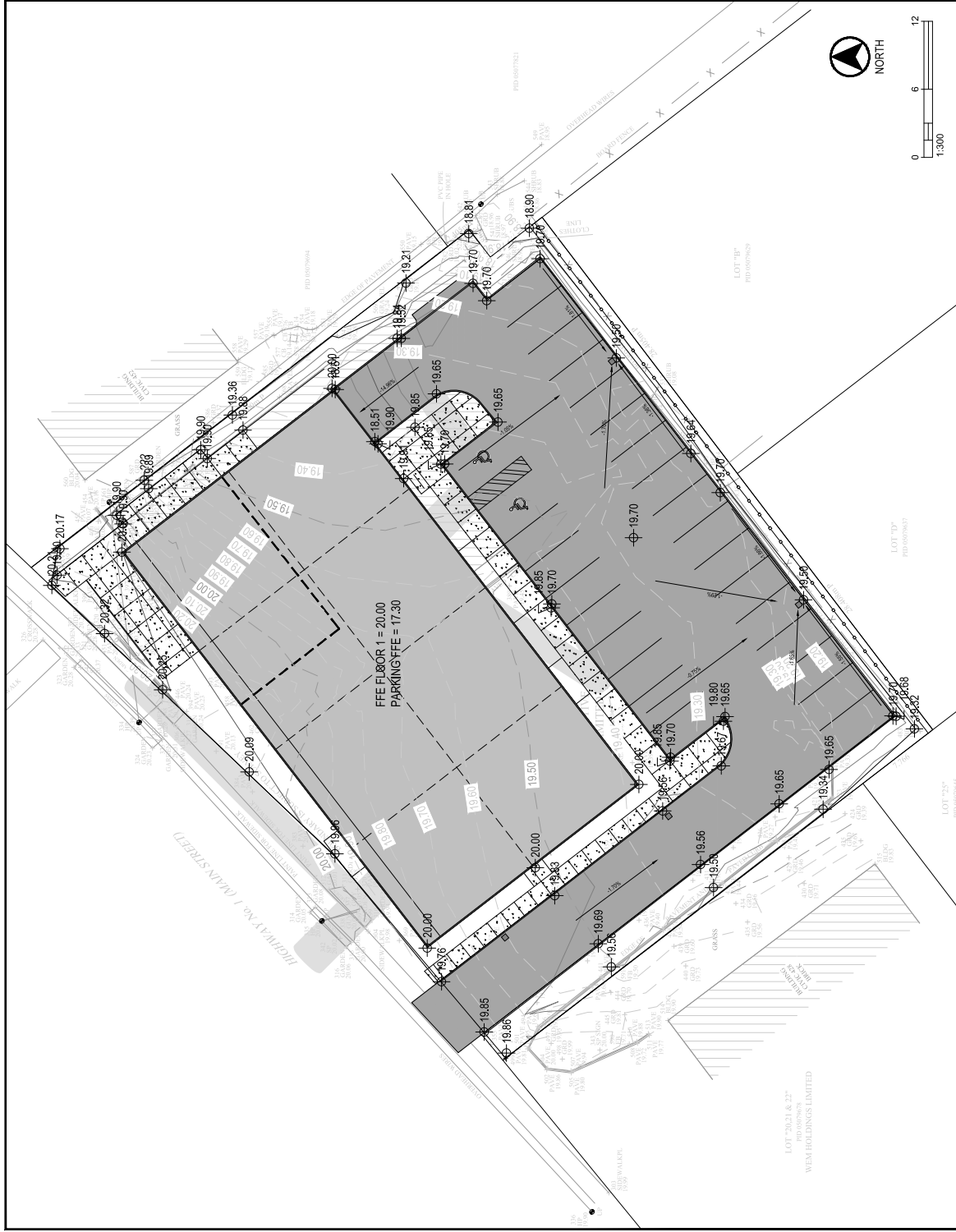
REVISION: [Signature]

PROJECT: BRUCE AUTO GROUP MIDDLETON

PROJECT: BRUCE AUTO GROUP MIDDLETON

PROGRAM NUMBER: [Signature]  
 CHECKED: [Signature]  
 APPROVED: [Signature]

DRAWING NUMBER: L101



Schedule "C", Building Massing



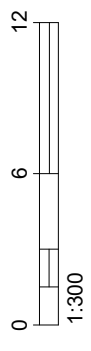
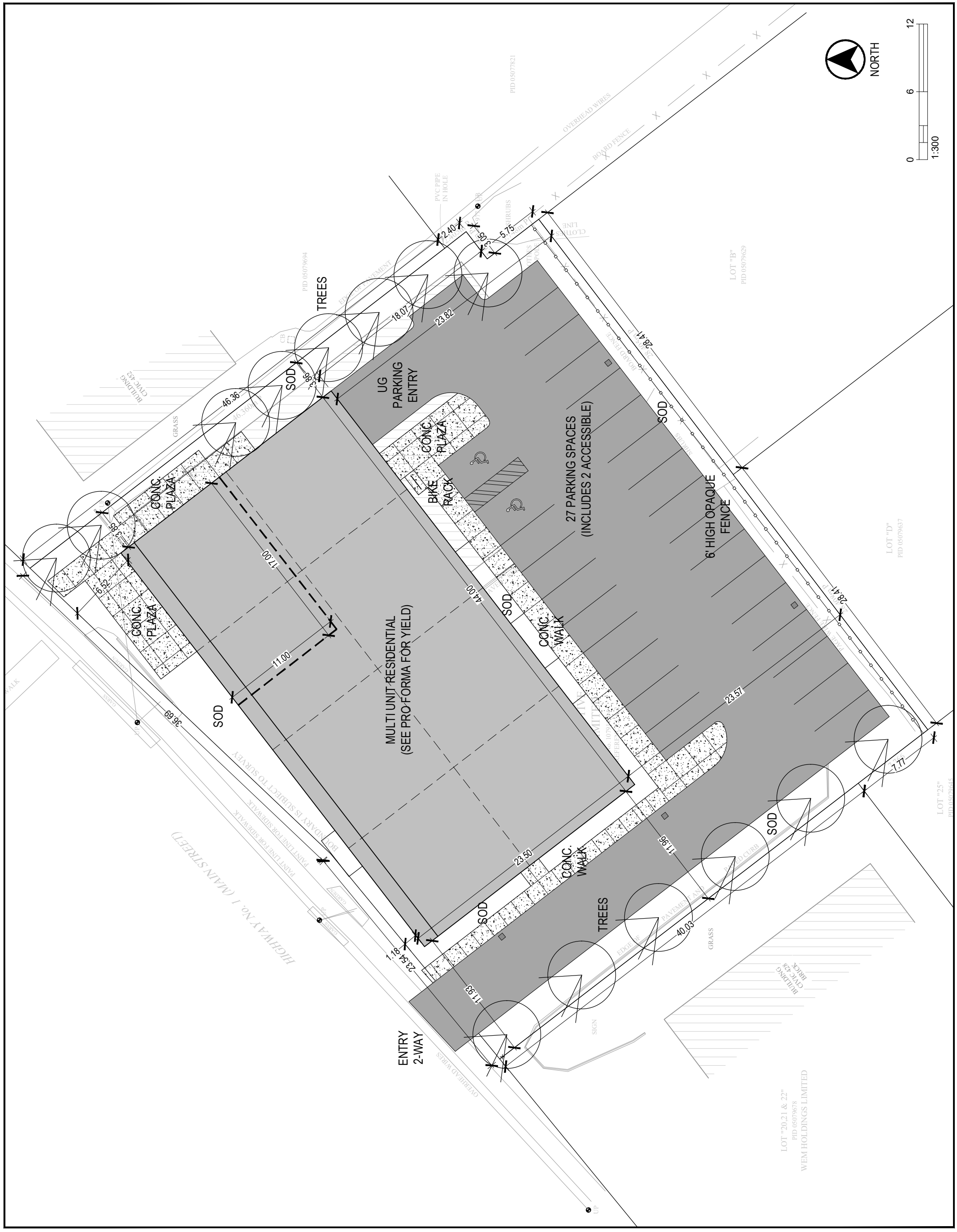












LOT "20, 21 & 22"  
PID 05079678  
WEM HOLDINGS LIMITED

LOT "D"  
PID 05079637

LOT "25"  
PID 05079645

LOT "B"  
PID 05079629

HIGHWAY NO. 1 (MAIN STREET)

ENTRY  
2-WAY

MULTI UNIT RESIDENTIAL  
(SEE PRO-FORMA FOR YIELD)

27 PARKING SPACES  
(INCLUDES 2 ACCESSIBLE)

6' HIGH OPAQUE  
FENCE

CONC. PLAZA

CONC. PLAZA

CONC. PLAZA

BIKE RACK

CONC. WALK

CONC. WALK

TREES

TREES

UG  
PARKING  
ENTRY

CONC. WALK

TREES

SIGN

EDGE OF PAVEMENT

PAVEMENT

EDGE OF CURB

PAVEMENT

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## Appendix D: Original Development Agreement

### Development Agreement

THIS DEVELOPMENT AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_  
A.D., 20\_\_\_\_\_:

#### BETWEEN

Town of Middleton, a municipal body corporate, pursuant to the Municipal Government Act of Nova Scotia, hereinafter called the "Town"

#### OF THE FIRST PART

and

438 Main Developments Ltd., a body corporate of Middleton, Nova Scotia, hereinafter called the "Developer"

#### OF THE SECOND PART

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AND WHEREAS the Developer has requested that the Town enter into this Development Agreement pursuant to Section 225 of the Municipal Government Act so that the Developer may develop and use the Lands in the manner specified herein;

AND WHEREAS Part 2.4 of the Town of Middleton Municipal Planning Strategy requires that approval of new multiple unit residential uses within the Commercial General Generalized Future Land Use Designation be considered by Development Agreement;

AND WHEREAS the Development has been considered at a Public Hearing and approved by a majority vote of the Town Council on September 5, 2023 pursuant to requirements of the Municipal Government Act;

NOW THEREFORE in consideration of the various covenants and benefits hereinafter set out in this Agreement, the parties hereto agree as follows:

1. Lands Subject to the Agreement

Lands subject to this Agreement shall include all those lands known as civic 438 Main Street, Middleton, identified as Nova Scotia Land Information PID 05079686, and described in the attached Schedule "A" of this Development Agreement.

2. Use of the Lands

The Lands shall be used for the construction of a four storey commercial residential mixed use building containing approximately 2,500 square feet of at-grade commercial floor area, 36 residential dwelling units with a minimum of nine (9) being two-bedroom and 58 parking spaces, two (2) of which shall meet Accessible Parking standards.

3. Site Plan and Layout Plan

The Lands shall be developed in general conformity with the Site Plan and Layout Plan attached as Schedule "B" of this Development Agreement.

4. Definitions

Unless otherwise defined in this Development Agreement, all words used herein shall have the same meaning as defined in the Middleton Land Use By-Law. Definitions in this Development Agreement which are not included in Part 3 of the Middleton Land Use By-law:

**STREETLINE GRADE** - means the elevation of a streetline at a point that is perpendicular to the horizontal midpoint of the streetwall. Separate streetline grades shall be determined for each streetwall segment that is greater than 12 metres in width or part thereof;

**STREETWALL** - means the wall of a building or portion of a wall facing a streetline that is below the height of a specified setback, which does not include minor recesses for elements such as doorways or intrusions such as bay windows;

**STREETWALL HEIGHT** - means the vertical distance between the top of the streetwall and the streetline grade, extending across the width of the streetwall;

**STREETWALL SETBACK** - means the distance between the streetwall and the streetline;

**STEPBACK** - means a specified horizontal recess from the top of a streetwall, which shall be unobstructed from the streetwall to the sky except as otherwise specified.

## 5. Building Design

The four-storey commercial residential mixed use building shall be constructed in general conformity with the Massing Model and Floor Plans attached as Schedule "C" of this Development Agreement and the following built form standards:

### 5.1 Building Materials

- (i) The following architectural materials are prohibited:
  - i. vinyl siding;
  - ii. plastic;
  - iii. plywood;
  - iv. unfinished concrete;
  - v. exterior insulation and finish systems where stucco is applied to rigid insulation; and
  - vi. darkly tinted or mirrored glass, except for spandrel glass panels.

### 5.2 Height and Stepbacks

- (a) The maximum Streetwall Height is 11.5m.
- (b) A minimum 2.5m Streetwall Setback shall apply to the fourth storey above the Streetwall Height.
- (c) The Streetwall Width may be reduced to no less than 70% of the width of the building abutting a streetline, allowing the midrise portion of the buildings to extend to the ground.
- (d) The maximum height of the building (excluding encroachments) is 13.5m.

### 5.3 Permitted Encroachments

- (a) Eaves, gutters, down spouts, cornices and other similar features shall be permitted encroachments into a required Streetwall Setback, Streetwall Stepback or separation distance to a maximum of 0.6 metres.
- (b) Balconies shall be permitted encroachments into a Streetwall Setback, Streetwall Stepback or separation distance, at or above the level of the second storey of a building, provided that the protrusion of the balcony is no greater than 2 metres from the building face and the aggregate length of such balconies does not exceed 50% of the horizontal width of that building face.

- (c) Notwithstanding (b) above, the rear of the building shall not permit projecting balconies. All balconies in the rear shall be inset.
- (d) Underground parking structures are not required to meet the minimum front, side or rear setbacks, providing they do not protrude more than 0.6 metres above the average finished grade in any front, side or rear yard.
- (e) The following are permitted encroachments to the height limit of 13.5m:
  - i. Rooftop Cupolas;
  - ii. Clear glass railing systems;
  - iii. Elevator or stair enclosures;
  - iv. Parapets;
  - v. Mechanical penthouses;
  - vi. Skylights;
  - vii. Solar collectors;
  - viii. Clock or bell towers;
  - ix. Landscape features like arbours, trees, planters, shade structures, flagpoles, etc.

#### 5.4 Building Articulation

- (a) Building massing should be varied by employing variations to architectural style such as wall breaks, facade materials, recessed and projection areas, roof changes, distinct colour schemes and roof treatments.
- (b) Streetwalls that abut a front yard, shall be divided into distinct sections no less than 12 metres in width, extending from the ground to at least one floor below the top of the Streetwall.
- (c) Each distinct section required under Subsection (b) shall be differentiated from abutting distinct sections by using a minimum of two of the following methods:
  - i. different colours;
  - ii. different materials;
  - iii. different textures;
  - iv. living walls;
  - v. projections not less than 0.15m (1') deep; or
  - vi. recesses not less than 0.15m (1') deep.
- (d) Pedestrian entrances in the Streetwall shall be distinguished from the Streetwall by using a minimum of two of the following methods:
  - i. different colours;
  - ii. different materials;
  - iii. projections not less than 0.15m (1') deep;
  - iv. recesses not less than 0.15m (1') deep;
  - v. a change in height; or
  - vi. a change in the roofline.

## 5.5 Amenity Space Requirements

- (a) The building shall provide amenity space, at a rate of 5.0m<sup>2</sup> per dwelling unit, for use by the building's residents. No less than 50% of all required amenity space shall be provided within the building. Rooftop uses are permitted amenity spaces if they are fully accessible by residents of the building.
- (b) Residential uses shall have direct access to the exterior ground level separate from any non-residential use.
- (c) All At-grade residential units must have front door walk-out access for all units fronting streetlines. These groundfloor units shall have at least 6m<sup>2</sup> of landscape amenity space per unit. These units shall use walls, landscape buffers, fencing or grade changes to provide privacy from adjacent sidewalks.
- (d) The Rooftop of the building shall include no less than 100m<sup>2</sup> of common amenity space.

## 5.6 Landscape Requirements

- (a) Where the site abuts an existing residential zone, a minimum landscape buffer of 2m shall be provided. The landscape buffer shall include:
  - i. 50mm caliper trees at a rate of one per 4m of abutting rear yard length. Spacing can be random;
  - ii. A 1.83m high opaque fence must be constructed along all rear lot boundaries between this site and properties fronting on Ross Lane. Preference shall be given to a wood fence. Fences shall either be built 1m off the property line so they can be maintained, or a maintenance agreement shall be secured with the adjacent property owners so that the fence can be periodically maintained;
  - iii. The buffer shall be planted with trees, perennials, annuals and/or woody shrubs.
- (b) There shall be no outside storage or garbage storage in the yard abutting a residential zone.
- (c) No additional site runoff may be directed to neighbouring properties.
- (d) Any exterior lighting or illuminated signs shall be so arranged as to deflect light away from the adjacent residential zone.
- (e) Invasive or highly toxic plant species are prohibited as soft landscaping material. Native plants are preferred.
- (f) Each commercial unit fronting on a street shall be connected to the street sidewalk by a min 1.8m wide sidewalk.
- (g) Shrub beds shall be planted at not less than 2m<sup>2</sup> for every 500m<sup>2</sup> of ground floor area of the building. Stormwater gardens can be considered as part of this calculation. Rooftop plantings may be used to meet this requirement.

- (h) Garbage holding areas should be contained within buildings or, if adjacent to a building, be designed with adequate screening. In no case shall garbage containers be left exposed to the street. These areas are to be properly ventilated, enclosed behind operable doors and equipped for full sanitary management.

## 6. Servicing

- (a) The provision of sanitary sewer, storm sewer and domestic water services shall be constructed in general conformity with the Servicing Schematic attached as Schedule "D" of this Development Agreement.
- (b) The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Town and other approval agencies.
- (c) All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Development Agreement or other approval agencies.
- (d) Access and Egress
  - i. The Developer must submit current permits from Nova Scotia Department of Public Works or any successor body, or the relevant Traffic Authority, to the Town before receiving any development or building permits for uses enabled by this Agreement.

## 7. All Other Matters Addressed in the Land Use By-law

In addition to those requirements specifically addressed in Paragraphs 1 through 6 inclusive of this Development Agreement all other relevant development control provisions contained in the Middleton Land Use By-law shall apply.

## 8. Matters Deemed Substantive

The following matters shall be considered substantive and may only be considered by amendment of this Development Agreement:

- (a) Any change to the uses permitted pursuant to Paragraph 2 of the Agreement;
- (b) Any change in the Building Design standards identified in Paragraph 5 of the Agreement;
- (c) Any change in building setbacks identified on the Layout Plan attached as Schedule "B";
- (d) The provision of less than 25% of the dwelling units as 2-bedroom or more;
- (e) Any increase to the maximum number of 36 dwelling units;
- (f) Any reduction in the parking ratio of 1.0 (space per unit) plus 2 spaces for the commercial use;
- (g) Any alterations to the lot configuration that would result in a reduced lot area, except as may be required by the road authority for the purpose of creating or expanding a public street over the Lands.

All other matters shall be considered non substantive, including discharge of this Development Agreement, and may be amended by resolution of Council.

## General Provisions

9. The Town does not make any representations to the Developer about the suitability of the Lands for the development proposed by this Agreement. The Developer assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development;
10. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Development Agreement.
11. Subject to the provisions of this Development Agreement the Developer shall observe all related ordinances, by-laws and regulations of the Town and nothing in this Development Agreement shall exempt the Developer from obtaining and complying with any and all permits or approvals required by Provincial or Federal laws or regulations.

12. This Development Agreement shall be filed with the Registry of Deeds at Lawrencetown, in the County of Annapolis and shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Development Agreement until this Development Agreement is discharged by the Town.
13. The provisions of this Development Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforceability of any other provision.
14. Where the provisions of this Development Agreement conflict with those of any by-law of the Town's applicable to the Lands (other than the Land Use By-law to the extent varied by this Development Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail. Where the written text of this Development Agreement conflicts with information provided in the Schedules attached to this Development Agreement, the written text of this Development Agreement shall prevail.
15. The Developer shall be liable for any damage caused to public or private property by Developer or any contractor or other individual doing work related to the development. The Developer shall indemnify the Town and save it harmless from any claim, cause of action, or liability in any way relating to the development. The Developer shall obtain and maintain in force throughout the course of construction on the development, liability insurance coverage to insure the responsibilities which the Developer is assuming in this section.
16. 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 responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Town's Director of Public Works.
17. The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to the exterior of the building, fencing, walkways, 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 and ice control, salting of walkways and driveways.
18. The Developer shall sign this Agreement within 180 calendar days of 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 or the unexecuted Agreement shall be null and void;

19. In the event that development on the Lands has not commenced within three (3) years from the date of registration of this Development Agreement at the Registry of Deeds, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law. For the purpose of this section, commencement of development shall mean the construction of foundation footings and walls pursuant to the Site Plan attached as Schedule "B" of this Development Agreement.
20. Upon the breach by the Developer of the terms or conditions of this Development Agreement, the Town may:
  - Apply for an injunction or injunction type relief; or
  - Prosecute under the Municipal Government Act, Land Use By-law or Building By-law, and/or Building Code Act;
  - Sue for specific performance of any terms or conditions; or
  - Sue for breach of contract; or
  - Discharge this Development Agreement; or
  - After 30 days' notice in writing, enter the Lands and perform any obligation with which the Developer has failed to comply strictly;
  - Undertake any remedies permitted by the Municipal Government Act;
  - Take no action but by taking no action on any breach or violation shall not bar the Town from exercising its rights under the Development Agreement for any other or a subsequent or continuing breach or violation of the same nature; or
  - Any combination of the above.
21. Any expenses incurred by the Town in exercising its rights under Paragraphs 16 and 20 shall be paid by the Developer to the Town. Such expenses may include, but are not limited to, costs incurred in returning property owned by the Town, or the Lands, to their original condition before the beginning of work on the development, costs incurred for entry on the Lands and performance of the Developer's obligations, and all solicitors' fees and disbursements incurred in terminating or discharging this Development Agreement. Such expenses shall be payable by the Developer to the Town as a debt and may be recovered from the Developer by direct suit. They shall form a charge upon the Lands. The Developer shall pay interest on any sum so expended by the Town at the same monthly rate charged by the Town for tax arrears on the outstanding balance from time to time. Such interest shall be treated as an expense.
22. The Developer warrants that the Developer has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance. No other entity has an interest in the lands which would require their signature on this Development Agreement to validly bind the lands or the Developer has obtained the approval of every other entity which has an interest in the lands whose authorization is required for the Developer to sign this Development Agreement to validly bind the lands. The Developer has taken all steps necessary to, and it has full authority to, enter this Development Agreement.

23. 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 Town to:

Town of Middleton  
131 Commercial Street  
Middleton, NS  
B0S 1P0  
Attention: Chief Administrative Officer

And to the Developer to:

438 Main Developments Limited  
90 Commercial Street  
Middleton, NS  
B0S 1P0  
Attention: Justin Barker

24. This Development Agreement may be discharged in accordance with the Agreement or by mutual consent of the Town and the Developer at any time.
25. Costs associated with the recording of this Development Agreement and all other aspects of processing this Development Agreement shall be the responsibility of the Developer.
26. This Development Agreement constitutes the entire agreement and contract entered into by the Town, the Developer. No other agreement or representation, oral or written, shall be binding.

THIS DEVELOPMENT AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, agents, successors and assigns.

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

SIGNED, SEALED AND DELIVERED

In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Per 438 Main Developments Limited

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Per 438 Main Developments Limited

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Sylvester Atkinson, Mayor  
Town of Middleton

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Ashley Crocker, Chief Administrative Officer  
Town of Middleton

Schedule "A", The Lands

ALL that certain piece and parcel of land situate, lying and being at Middleton, Annapolis County, Nova Scotia, more particularly bounded and described as follows:

BEGINNING at a stake on the South side of Main Street and at the Northwest corner of Lot 45 of the Dodge and Dowell Subdivision;

THENCE Southerly along the West side of Lot 45 a distance of 152.11 feet to a survey marker in the North side of Lot 50;

THENCE South 37 degrees 39 minutes 20 seconds East a distance of 7.89 feet to a survey marker;

THENCE South 52 degrees 20 minutes 40 seconds West a distance of 10.00 feet to a survey marker;

THENCE South 37 degrees 39 minutes 20 seconds East a distance of 18.86 feet to a survey marker;

THENCE South 52 degrees 41 minutes 10 seconds West a distance of 186.41 feet to a survey marker;

THENCE North 37 degrees 33 minutes 30 seconds West a distance of 25.48 feet to a survey marker;

THENCE Northerly along the East side of Lot 25 and Lot 22 a distance of 130.34 feet to a stake set on the South side of Main Street;

THENCE in an Easterly direction along the South side of Main Street a distance of 197.27 feet to the PLACE OF BEGINNING.

BEING AND INTENDED TO BE Lot C1 on a Plan of Consolidation prepared by Derik R. DeWolfe, N.S.L.S. Dated August 21, 1987 and approved for subdivision purposes by the Town of Middleton on September 3, 1987 as plan 1975. Lot C1 is a consolidation of Lot 43 and Lot 44 of the Dodge and Dowell Subdivision and a Northerly portion of the McKenzie Avenue Lot; bearings and distance for these lots are taken from the Plan of Dodge and Dowell Subdivision. Lot C1 also included Lot A on a Plan of Consolidation prepared by James B. Gillis, N.S.L.S. dated May 2, 1980 and which was approved by the Town of Middleton on June 20, 1980 and which Plan is on file at the Registry of Deeds, Lawrencetown, Nova Scotia under Plan No. 1663; bearings and distances for Lot A are taken from the Gillis Plan; Lot C1 is also a consolidation of the northerly portion of Lot 48 and Lot 49 of the Dodge and Dowell Subdivision and a Southerly portion of the MacKenzie Avenue Lot into Lot C; bearing and distances for Lot C are taken from the DeWolfe Plan.

Schedule "B", Site Plan and Layout Plan





fathom.co.uk  
 1 Star Lane  
 Dartmouth, NS  
 EX17 4J7

DATE: 10/10/2018

DATE: 10/10/2018

DATE: 10/10/2018

DATE: 10/10/2018

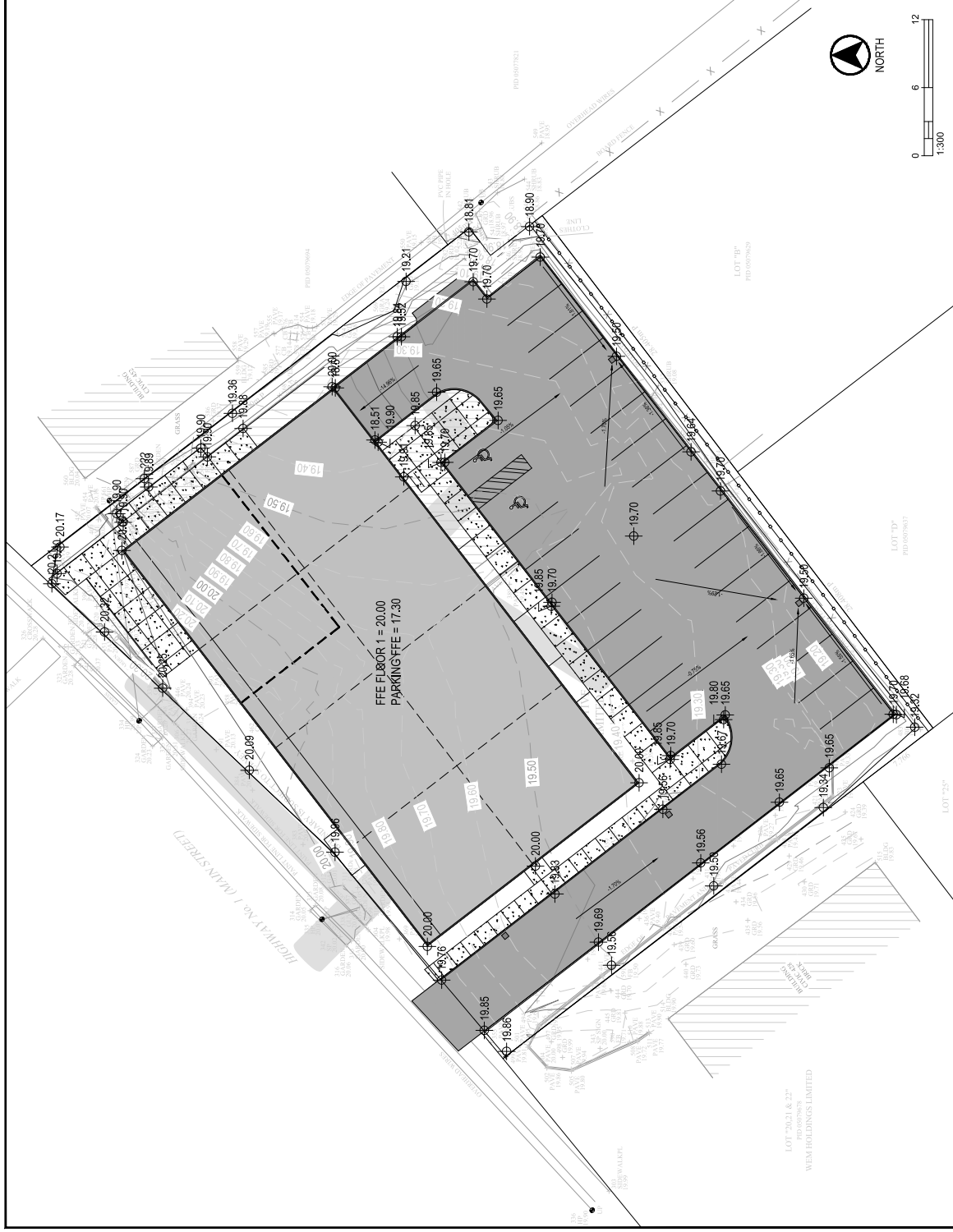
DATE: 10/10/2018

Project: BRUCE AUTO GROUP MIDDLETON

Project Name: GRADING PLAN

Program Number: 1-320  
 Checked: RIL  
 Approved: RIL

Drawing Number: L101



Schedule "C", Building Massing and Floor Plans







# Middleton Pro Forma

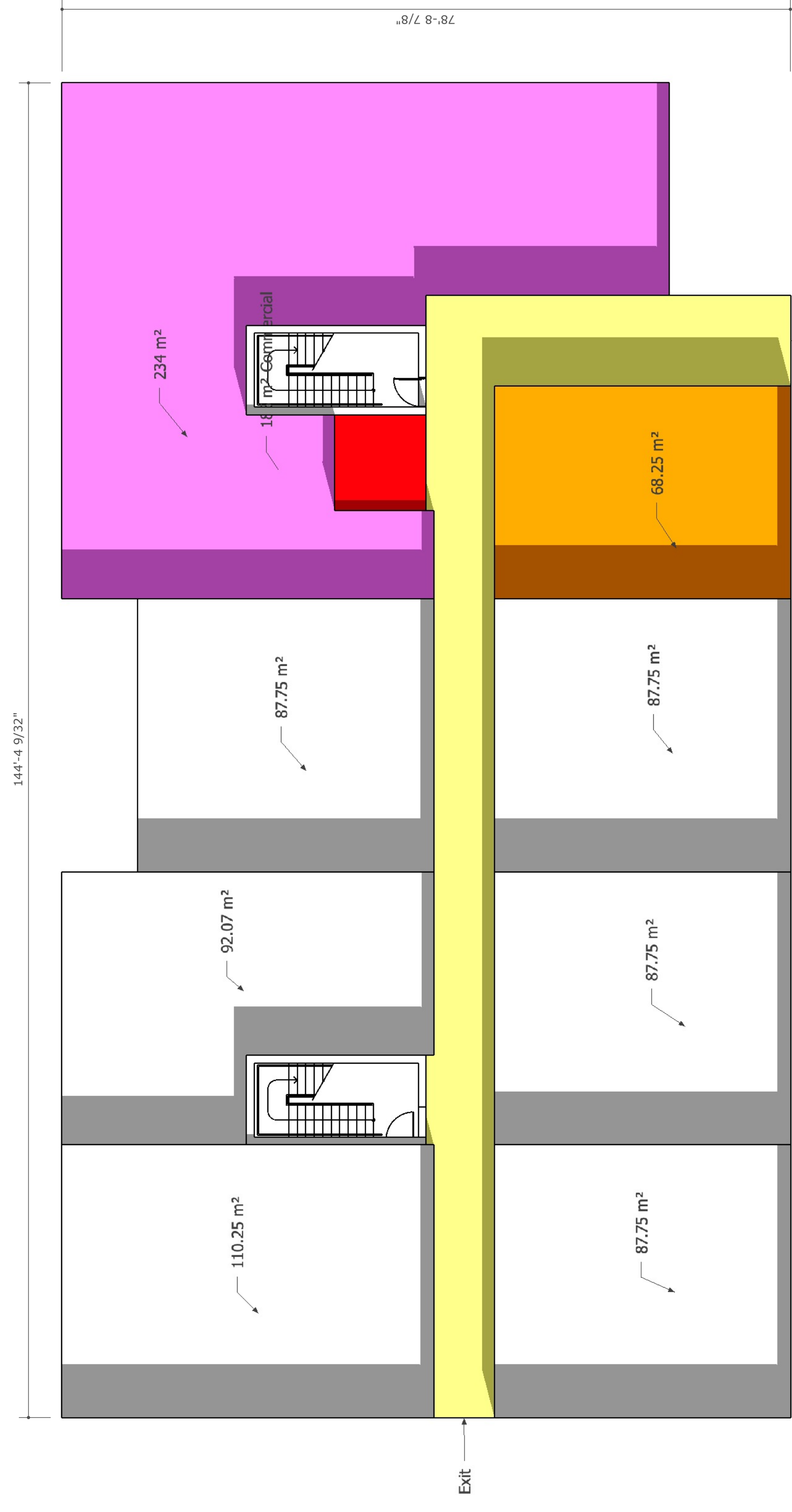
April 2023

	Parking	Commercial (sq ft)	Residential (sq ft)	Units
P1	30			
Floor 1		2,013	9,117	6
Floor 2			11,130	10
Floor 3			11,130	10
Floor 4			10,419	10
Surface Parking	27			
<b>Total</b>	<b>57</b>	<b>2,013</b>	<b>41,796</b>	<b>36</b>
Total GFA	43,809	sq ft		
Parking Ratio	1.6			
Lot Area	32,187	sq ft		
Lot Area (Acres)	0.74	acres		
Density	48.7	UPA		
Building Area	11,130	sq ft		
Lot Coverage	34.6	%		
Building Height (above grade)	42	sq ft		
Building Volume (above grade)	467,455	cu ft		



Parking Garage  
SCALE: 1" = 10'

A 01



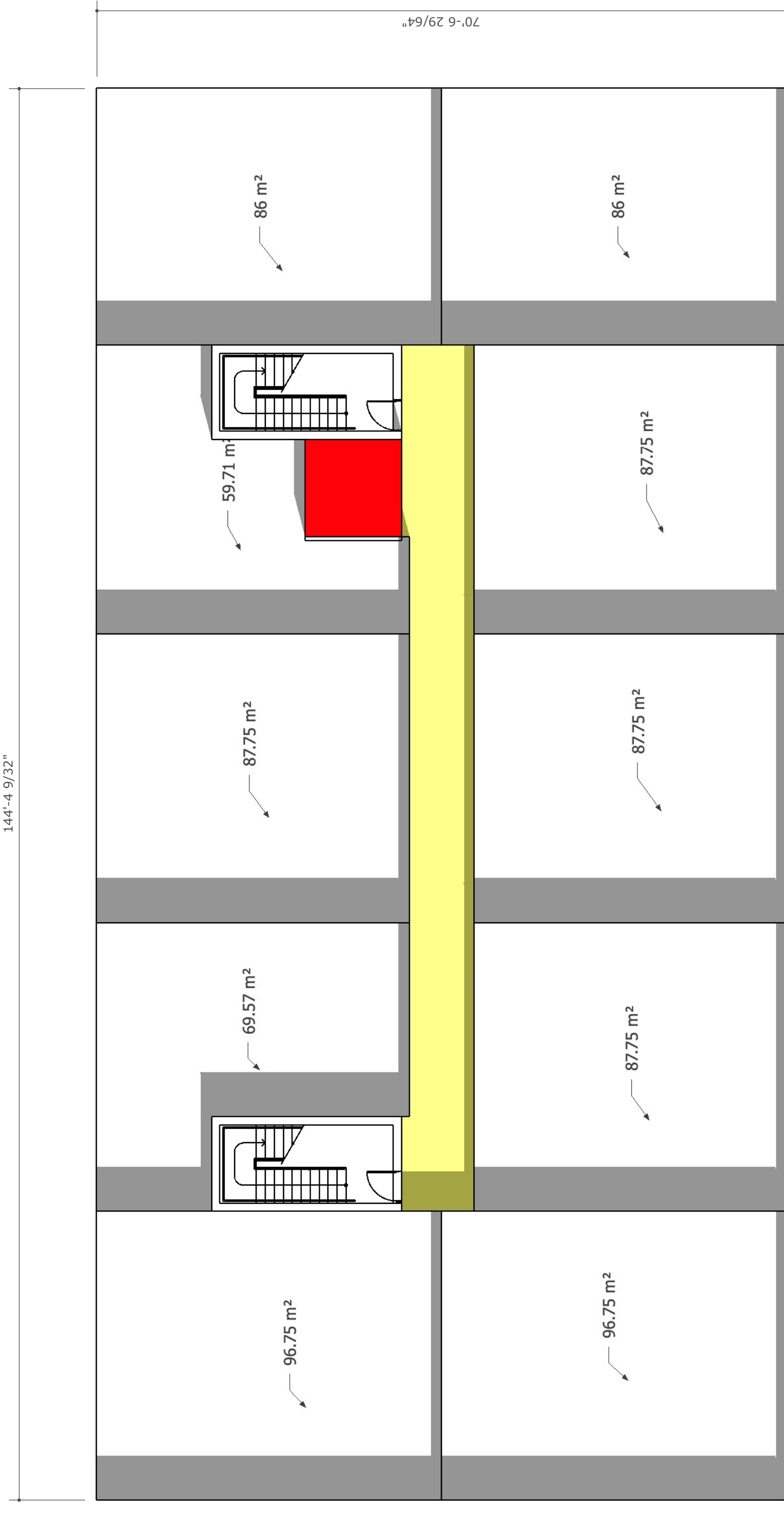
First Floor  
SCALE: 1" = 10'

A 02



Second & Third Floor  
SCALE: 1" = 10'

A 03

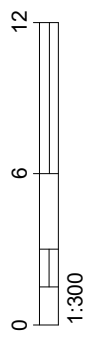
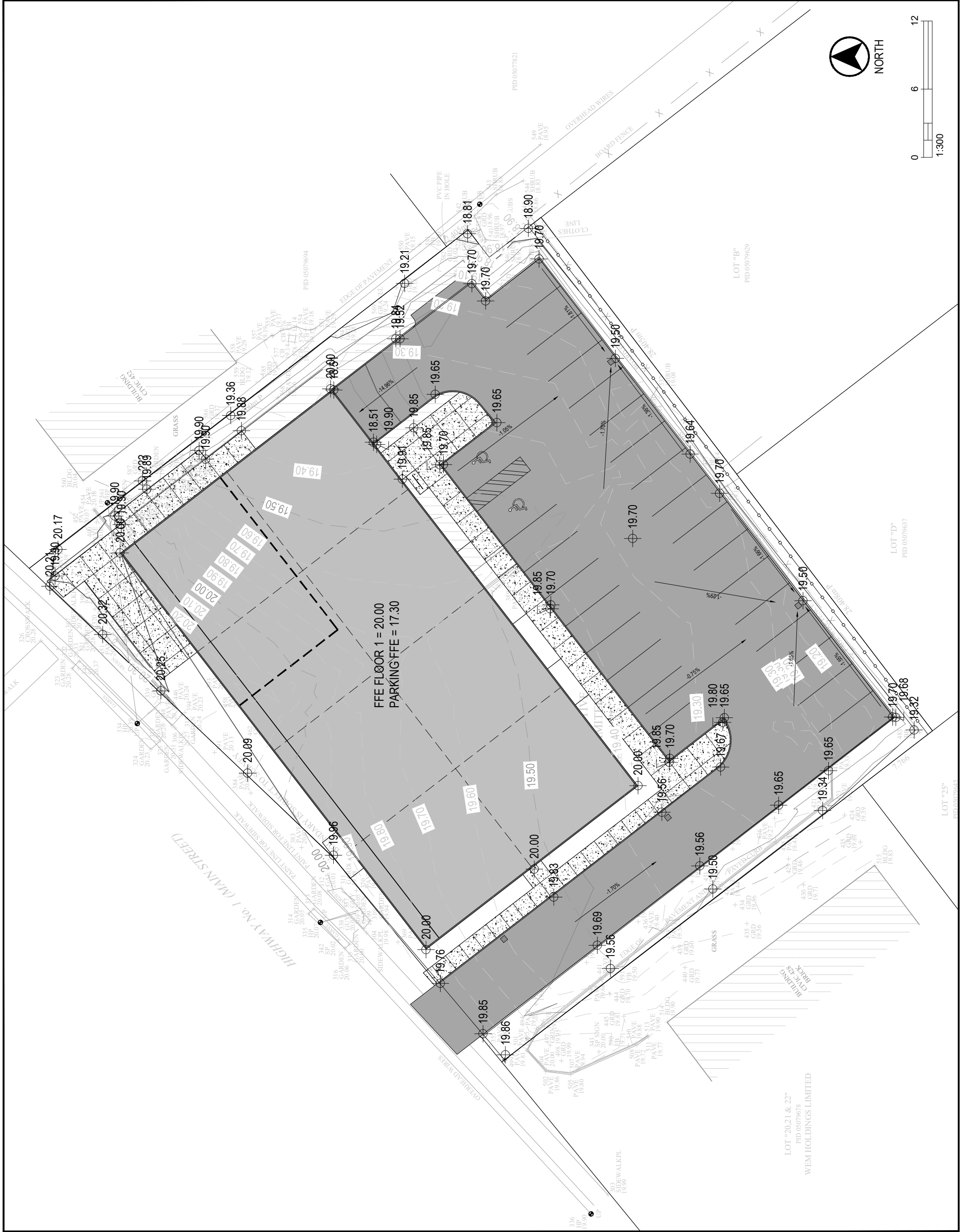


Fourth Floor  
SCALE: 1" = 10'

A 04







LOT "20, 21 & 22"  
PID 05079678  
WEM HOLDINGS LIMITED

LOT "25"  
PID 05070645

LOT "D"  
PID 05079637

LOT "B"  
PID 05079629

PID 05077821

PID 05079694

PID 05079694

PID 05079694

PID 05079694

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