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**District 12 Planning Advisory Committee - June 22, 2009**  
**Heritage Advisory Committee - June 24, 2009**

**TO:** Chair and Members of District 12 Planning Advisory Committee  
Chair and Members of Heritage Advisory Committee

**SUBMITTED BY:**

Dan English, Chief Administrative Officer

Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** June 15, 2009

**SUBJECT:** Case 01162 - Development Agreement, Hollis & Morris Streets  
**SUPPLEMENTARY REPORT**

**ORIGIN**

- Request for Supplementary Report, District 12 Planning Advisory Committee - May 25, 2009
- Staff Report and Proposed Development Agreement dated May 13, 2009
- Decision of Regional Council to include provision in the HRMbyDesign documents to grandfather this project under the existing planning objectives and policies of the Halifax Municipal Planning Strategy
- Application by Dixel Developments Limited

**RECOMMENDATION**

**It is recommended that the District 12 Planning Advisory Committee and the Heritage Advisory Committee recommend that Regional Council:**

1. Move Notice of Motion to consider the development agreement, as contained in Attachment A1 of this report, to allow for a ten storey, mixed-use building at 1267-1285 Hollis Street and 5142-5144 Morris Street, Halifax, and schedule a public hearing.
2. Approve the development agreement, as contained in Attachment A1.
3. Require that the development agreement be signed and returned within 120 days, or any extension thereof granted by Regional Council on request of the Developer, from the date of final approval by Regional Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## EXECUTIVE SUMMARY

The District 12 Planning Advisory Committee has requested additional information on a proposal to develop a 10 storey building at the south-east corner of Hollis and Morris streets pursuant a May 13, 2009 staff report and proposed development agreement. The request is with regard to building materials, the appropriateness of the proposal with regard to its relationship to adjacent heritage buildings, a brick wall on the southern elevation, the historic significance of the existing buildings on the site, and the identification of the architect/design team associated with the project.

In response to the Committee's request:

- Revisions have been made to the proposed development agreement that more precisely define building materials.
- An expanded analysis about the surrounding heritage buildings continues to find that the proposal is appropriate, especially given its relationship to the sidewalk.
- The brick wall on the southern elevation that has been cited as a "blank wall" by the Committee has been considered with the conclusion that the wall is not a prominent feature given that it does not face a sidewalk and is of a limited size.
- Additional information is provided about the historic relevance of the existing buildings on the site, but it is concluded that this has limited bearing upon the proposal as they are not registered heritage properties.
- The architect and design team are identified as Breakhouse, Michael Napier Architects, and Dixel Developments.

It is recommended that the District 12 Planning Advisory Committee and Heritage Advisory Committee recommend that Council approve entering into the proposed development agreement.

## BACKGROUND

On May 25, 2009, the District 12 Planning Advisory Committee considered a May 13, 2009 staff report and proposed development agreement for a 10 storey building on the south-east corner of Hollis and Morris (Attachment A3 - May 13, 2009 Staff Report Package). Following discussion, the Committee compiled a list of matters about which it wished to have additional information (Attachment A2 - Email from District 12 Planning Advisory Committee). These concern:

- The options in the development agreement respecting its exterior materials;
- A brick wall that is cited as a blank wall;
- The historic significance of buildings on the subject site and related heritage registration information; and
- The project's architects and design team.

With this, the Committee requested a more precise identification of the proposed building materials. This has resulted in changes to the original development agreement.

The response to the information sought by the Committee and details about the changes to the development agreement are as follows.

### **Exterior Materials**

The schedules of the proposed development agreement included with the May 13, 2009 staff report provide the developer with some limited flexibility over the types or colours of exterior materials that may be used. The drawings identify that:

- Stone veneer on the base of the building facing Morris and Hollis Streets that is light tone grey or cream coloured;
- Bands on that part of the base of the building that is at the corner of Hollis and Morris Streets, may be either stone or synthetic stucco;
- The part of the base of the building that is to be clad with either grey or dark brown coloured shingle siding;
- The cladding on the middle part of the building may be either pre-cast concrete or aluminum panels; and
- The balconies on the middle part of the building may be either red tinted or clear glass.

The District 12 Planning Advisory Committee states that the building materials should be more precisely defined and also questions who would ultimately decide on what materials would be selected when options are provided. Additional information is also sought about the construction materials associated with the framing and underside of the balconies. With this, the Committee requests additional information about how the materials relate to Municipal Planning Strategy policy 5.6.1 of the Halifax Waterfront Plan Area.

#### *Stone veneer colour*

There is a colour option of either light tone grey or cream that would be at the discretion of the Developer for the stone veneer. The Developer would like to retain this option, which is seen as reasonable given that the proposed colours are light in tone.

#### *Stone or synthetic stucco bands*

Based upon previous consultation with the developer, it is likely that the bands will be synthetic material. The weight of actual stone may be impractical, but the Developer would like to retain this option. Therefore, it is recommended that the option to install either material be retained. The choice of materials is with the Developer.

### *Shingle colours*

The choice of shingle colour has an impact upon the appearance of part of the building. To be more precise, the schedule drawings have been revised to reflect a grey colour shingle. Out of the two colours, it is thought that the grey will most suitably relate to the rest of the building and the surroundings.

### *Precast / Aluminum Cladding*

The choice of either precast or aluminum cladding upon the middle of the building was not thought to have a significant bearing upon the overall design of the building or its relationship to its immediate surroundings. The base of the building and its materials are of a greater importance. However, on the basis that there is a difference between the appearance of the two materials, the drawing schedules have been revised to reflect that white coloured aluminum will be used.

### *Balconies*

The balconies had the option of being either clear or red-tinted glass and there was not information provided about their base material or underside finishing. The revised schedules reflect that balconies will have a concrete base and enclosures comprised of red tinted glass. Balconies of this type are typically an unfinished concrete, which appears as a reasonably smooth finish from the vantage point of a person at ground-level.

The red tint accents are building elements that are not found within the surrounding area, but this does not make them inappropriate. Brightly coloured buildings and building elements are common in the area. Many of the wooden shingled heritage buildings in the surrounding area, including those across the streets from the site, have brightly coloured building faces and building elements.

### *Relationship to Policy 5.6.1*

The relationship of the development to policy 5.6.1 is discussed in May 13, 2009 staff report. The policy is:

“The exterior architectural design of new buildings should be complementary to any adjacent ones of historic or architectural significance, or important to the character of Halifax. In such instances, the careful use of materials, colour, proportion, and the rhythm established by surface and structural elements should reinforce the similar aspects of the existing buildings.”

This policy has been the focus of considerable attention when past development agreement proposals have been assessed by the public, staff, committees, councils, and the Nova Scotia

Utility and Review Board. Much of this has been centred upon the meaning of the individual words within the policy and how the policy itself should be applied.

It is most relevant to weigh the policy based on the individual circumstances of a particular subject site, the building proposal, and the adjacent buildings of historic or architectural significance. In the situation of a small infill development between two heritage buildings, quite detailed care might need to be taken to ensure that the, “materials, colours, proportion and the rhythm established by surface and structural elements should reinforce the similar aspects,” of those heritage buildings. The symmetry and types of windows and other elements may be very important in such a situation.

The proposal is across streets from registered heritage properties (see the description in the May 13, 2009 staff report). In this case there should be less emphasis upon the individual elements of these buildings, such as the fine detailing of features such as their windows or cornices, in favour of an approach where the overall character that is established by the sum of these elements is reinforced. As noted in the May 13, 2009 staff report, for the area around Hollis and Morris streets, this character is defined by the relationship of buildings to the street, being close to sidewalks and their entrances close to them (proportion and rhythm), and the presence of fine-grained elements (material). The colours of materials upon the base are similar to those found on other masonry buildings in the surrounding area.

The middle and top parts of the building, being setback from the base, are not essential elements with respect to the policy as it relates to the character of the subject site and its surroundings. They will be apparent further away and within this context it is important to note that they will blend with other buildings in the surrounding area, including the eight storey office building on the same block and the power plant redevelopment which will consist of glass curtain wall.

While the development agreement makes provisions for changes to the aforementioned materials through the use of a non-substantive amendment, such changes would have to comply with the applicable MPS policies, and be reviewed by PAC and HAC and ultimately approved by Council.

### **Blank Wall**

The District 12 Planning Advisory Committee has asked staff about the rationale of supporting a flat brick wall, referred to as blank wall by the Committee, that forms part of the south elevation. It is along the southern property boundary and is approximately 43 feet (four storeys) in height by 46 feet in width. It is to be expected that in the future, a new building to the south will obscure this wall. The Committee’s concern is the appearance of the wall in the meantime, given that nothing is known about when the abutting property may be developed.

Blank walls are typically described as walls without windows or openings that face the public realm such as sidewalks. They are viewed as unattractive and monotonous for pedestrians. In

addition to street level situations, blank walls may be viewed unattractive when they extend to upper storeys of tall building and become visually prominent features.

Staff share the District 12 Planning Advisory Committee's concern with blank walls. However, with regard to the proposed development, it is only to a limited degree that the southern wall might be characterized as an actual "blank wall." This portion of the southern elevation does not face the abutting sidewalk and it is relatively low in height and overall size. Therefore it does not cause a significant concern.

### **Buildings of Historic Significance**

The Municipality undertook heritage evaluations on the buildings that currently occupy the subject site, but the lots are not registered heritage properties. The District 12 Planning Advisory Committee is concerned that the Municipality did not follow-through on policies that call for the heritage registration of significant buildings, specifically with regard to the existing buildings. The Committee has asked for more information about the significance of the buildings and the heritage evaluations that were undertaken. Additionally, the Committee has cited 1267 Hollis Street as being of particular importance and wants to know if a feasibility study has ever been done regarding its retention and restoration as part of the new development.

#### *Historic Significance*

The site is comprised of two properties (Map 1). The smaller of the two, along Hollis Street, has a house upon it. The larger second property, at the corner of Hollis and Morris streets, has a detached house facing Hollis Street and two attached buildings that are known as the Victoria Apartments. The site has important historical associations:

- Charles Morris I was one of Halifax's original settlers and with the arrival of Edward Cornwallis in 1759 was responsible for the laying out of the "town of Halifax." That year he was appointed, "Chief Surveyor of the Lands of this Province" and throughout his life he held prominent judicial positions. The building housing an office and store owned by him was originally located at the corner of Hollis and Morris streets. This building, 1273 Hollis Street, still stands, having been relocated to the southern part of the property some time around 1897.
- Charles Morris III, also a surveyor, constructed a building in 1820 facing Morris Street, civic no. 5142, which was later substantially modified and incorporated into the abutting Victoria Apartment building.
- The Victoria Apartment building, 5144 Morris Street and 1275 through 1285 Hollis Street, was originally built as a hotel in 1897 and as noted above was joined to the Charles Morris III building. It is architecturally notable from a heritage perspective for its verandah, which is a rare feature in downtown Halifax. It was scored for heritage registration on February

11, 1988, but there is no indication in our files of whether it was recommended for actual registration.

- The house on the separate property, 1267 Hollis Street, is known as the Ruhland House and it is thought to have been constructed around the time of confederation.<sup>1</sup>

### *Heritage Registration*

The properties are not registered heritage properties. The buildings on the site were scored for heritage registration in 1988, which involved assigning values to buildings based upon a variety of characteristics such as age, relationship, and architectural merit. At this time a score of 45 points or greater typically meant that a building warranted heritage registration. Information about the registration review, which was undertaken by the Evaluation and Registration Subcommittee of Heritage Advisory Committee, for each of the buildings is as follows:

- 1273 Hollis Street was evaluated for heritage registration on February 11, 1988 and received a score of 57. On February 18, 1988 a letter was sent from the Municipality's Heritage Property Program to the Province recommending that it be considered for Provincial registration.
- 5142 Morris Street was evaluated for heritage registration on March 3, 1988 and received a score of 30.
- The Victoria Apartment building, 5144 Morris Street and 1275 through 1285 Hollis Street, was evaluated for heritage registration on February 11, 1988 and received a score of 59.
- 1267 Hollis Street was evaluated for heritage registration on February 11, 1988 and received a score of 47.

Aside from the recommendation to the Province for 1273, the files do not contain information about the implications of the scoring exercises, such as any subsequent correspondence. However, it should be noted that the practice at the time was to contact property owners about their interest in having their properties registered. Without their concurrence, for both municipal and provincial registration, no further action was normally taken.

### *Implication of Heritage Scoring*

Clearly, the properties are important to the history of Halifax. However, the efforts of the subcommittee in scoring them did not result in their registration. It may be worthwhile to gain a better understanding of the processes associated with the general scoring of buildings and

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<sup>1</sup>HRM Heritage registration assessment documents

recommendations for the registration of properties, but this is a separate matter to the evaluation of the proposal at hand.

### *Feasibility Study*

A feasibility study for the retention of the buildings on the site has not been undertaken. If the buildings were registered, such a study might be warranted as there would be a legislative context for their retention. As the properties are not registered the buildings could be demolished or altered at any point at the discretion of the property owner. On this basis, the condition of these buildings is not a consideration in evaluating the proposal. Rather, it is the adjacent registered heritage buildings that are relevant within the context of the Municipal Planning Strategy.

### **Design Team**

The District 12 Planning Advisory Committee has asked that the architect and design team for the project be identified. They are:

- Breakhouse, a design firm in Halifax;
- Dixel Developments, which is also the developer of this proposal and is in Halifax; and
- Michael Napier Architects, an architectural firm in Halifax.

### **Conclusion**

The comments from the District 12 Planning Advisory Committee have resulted in a more precise indication of the materials to be used on the proposed building. Other information provided in this supplementary report expands upon the May 13, 2009 staff report. With this information, it is found that the proposal continues to respond favourably to the objectives and policies of the Municipal Planning Strategy.

### **BUDGET IMPLICATIONS**

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.



ALTERNATIVES

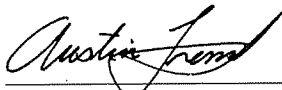
1. Regional Council could approve the proposed development agreement. This is the recommended alternative.
2. Regional Council could refuse the proposed development agreement. Pursuant to subsection 6 of Section 254 of the Halifax Regional Municipality Charter, Council must provide reasons for this refusal based on the policies of the MPS.
3. Regional Council could approve the proposed development agreement with changes. This alternative would require concurrence with the developer and would need to be consistent with the objectives and policies of the Halifax Municipal Planning Strategy and the Regional Municipal Planning Strategy. An additional public hearing may also be required.

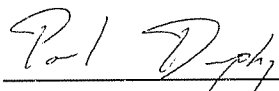
ATTACHMENTS

- Attachment A1 Revised Development Agreement  
Attachment A2 Email from District 12 Planning Advisory Committee

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Richard Harvey, Senior Planner, 490-5637

Report Approved by:   
Austin French, Manager, Planning Services, 490-6717

Report Approved by:   
Paul Dunphy, Director, Community Development



## **1.2 Applicability of Land Use By-law and Subdivision By-law**

- 1.2.1 Except as otherwise provided for herein, the development, subdivision, and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.

## **1.3 Applicability of Other By-laws, Statutes and Regulations**

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial and Federal Governments and the Developer and/or lot owner agree to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.
- 1.3.2 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 Municipality and other approval agencies. 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 other approval agencies.

## **1.4 Conflict**

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

## **1.5 Costs, Expenses, Liabilities and Obligations**

- 1.5.1 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this

Agreement and all federal, provincial and municipal laws, by-laws, regulations, and codes applicable to the Lands.

## 1.6 Provisions Severable

- 1.6.1 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

## PART 2: DEFINITIONS

### 2.1 Words Not Defined under this Agreement

- 2.1.1 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law.

### 2.2 Definitions Specific to this Agreement

- 2.2.1 The following words used in this Agreement shall be defined as follows:
- (a) **“Building”** means the building that is the subject of this Agreement and as shown in its Schedules.
  - (b) **“Information sign”** means a sign providing information, including a sign guiding vehicular or pedestrian traffic, that is generally for safety or directional purposes.
  - (c) **“Landscape Architect”** means a professional, full member in good standing with the Canadian Society of Landscape Architects.
  - (d) **“Living Wall”** means vegetation that is installed upon the wall of a building.
  - (e) **“Personal service use”** means a business that is associated with the grooming or health of persons or the maintenance or repair of personal wardrobe articles and accessories, and may include a hair salon, beauty parlor, tailor, self service laundry, or depots for collecting dry cleaning and laundry.

### PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

#### 3.1 Schedules

- 3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the Schedules attached to this Agreement, unless further specified under the Agreement, and filed in the Halifax Regional Municipality as Case Number 01162:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Landscaping Plan
Schedule D	Building Elevation (North)
Schedule E	Building Elevation (South)
Schedule F	Building Elevation (East)
Schedule G	Building Elevation (West)
Schedule H	P2 Parking Level
Schedule I	P1 Parking Level
Schedule J	Floor Plan - 1 <sup>st</sup> Level
Schedule K	Floor Plan - 2 <sup>nd</sup> Level
Schedule L	Floor Plan - 3 <sup>rd</sup> Level
Schedule M	Floor Plan - 4 <sup>th</sup> Level
Schedule N	Floor Plan - 5 <sup>th</sup> Level
Schedule O	Floor Plan - 6 <sup>th</sup> Level
Schedule P	Floor Plan - 7 <sup>th</sup> Level
Schedule Q	Floor Plan - 8 <sup>th</sup> Level
Schedule R	Floor Plan - 9 <sup>th</sup> Level
Schedule S	Floor Plan - 10 <sup>th</sup> Level
Schedule T	Roof Level

#### 3.2 Permitted Land Uses

- 3.2.1 The following uses shall be permitted on the lands:
- (a) banks;
  - (b) commercial recreation uses;
  - (c) daycares;
  - (d) offices;
  - (d) personal service uses;

- (e) schools;
- (f) stores for retail trade;
- (g) residential uses; and
- (h) restaurants.

3.2.2 For greater certainty, in no case shall adult entertainment uses be permitted.

### 3.3 Land Use Requirements

3.3.1 Changes in the interior arrangement of floor space shown on 1<sup>st</sup> Level (Schedule J) shall be permitted provided that the “Commercial Space” is in general conformance with said schedule.

3.3.2 The uses permitted in the floor area generally identified on the 1<sup>st</sup> Level (Schedule J) as “Commercial Space” shall be restricted to:

- (a) banks;
- (b) commercial recreation uses;
- (c) daycares;
- (d) personal service uses;
- (e) restaurants;
- (f) schools; and
- (g) stores for retail trade.

3.3.2 The primary entrances for the uses identified in 3.3.2 shall be directly from Hollis and Morris streets, in general conformance with the Schedules.

3.3.3 A maximum of 1 dwelling unit shall be permitted on the 1<sup>st</sup> Level (Schedule J).

3.3.4 The 2<sup>nd</sup> Level through the 10<sup>th</sup> Level (Schedules K through S) shall be comprised of residential uses to a maximum of 84 dwelling units.

- 3.3.5 Changes in the interior arrangement of dwelling units shown on the 2<sup>nd</sup> Level through the 10<sup>th</sup> Level, (Schedules K through S) shall be permitted provided that the maximum number of the dwelling units specified in clause 3.3.3 is not exceeded and that such changes comply with all other requirements of Agreement including the parking space requirements.
- 3.3.6 Notwithstanding clause 3.3.4, the 2<sup>nd</sup> Level (Schedule K) may be used, in whole or in part, for non-residential uses that are permitted by this Agreement. Such a change in use shall not reduce the maximum number of dwelling units specified in clause 3.3.3.
- 3.3.7 The hours of operation for restaurants shall be between 7:00 a.m. and 12:00 a.m..

### **3.4 View Plane Requirements**

- 3.4.1 For greater certainty, with regard to clause 3.1.1 (the Schedules of this Agreement), and notwithstanding any other provision of this Agreement, no element of the building, including any fixture which is to be attached to the building, shall violate the view plane requirements of the Land Use By-law.

### **3.5 Awnings**

- 3.5.1 Where fixed or retractable awnings are shown on the Schedules as encroaching into the Municipal right-of-way, such encroachment shall be subject to separate Municipal approval pursuant to 1.3.1.
- 3.5.2 Where such awnings are permitted pursuant to 3.5.1, they shall be comprised of fabric material and any signage upon them shall be subject to the signage requirements of this Agreement.

### **3.6 Roof Mounted Mechanical and Telecommunication Equipment**

- 3.6.1 Roof mounted mechanical equipment shall be as generally shown on the Schedules. Changes to the number, placement, size, and type of mechanical equipment shall be permitted where said equipment is visually concealed in a manner that is consistent with that which is shown on the Schedules.
- 3.6.2 Roof mounted telecommunication equipment shall be integrated into the roof design of the building.

### 3.7 Functional Elements

- 3.7.1 Other than roof mounted mechanical equipment, pursuant to 3.6.1, mechanical equipment, exhausts (except exhausts for individual dwelling units), propane tanks, electrical transformers, and other utilitarian features shall be visually concealed from abutting properties, including municipal rights-of-way.

### 3.8 Parking

- 3.8.1 The following parking requirements shall apply:
- (a) The minimum size of a parking space shall be 8 feet in width and 16 feet in length;
  - (b) The minimum width of driveways between parking spaces shall be 20 feet; and
  - (c) Parking shall be provided at a rate of:
    - (i) 1 parking space for every 4 bachelor dwelling units or 1 bedroom units, or part thereof; and
    - (ii) 1 parking space for every dwelling unit that is not a bachelor dwelling unit or 1 bedroom unit;
- 3.8.2 In addition to the vehicular parking shown on P2 Parking Level (Schedule H) and P1 Parking Level (Schedule I), bicycle parking shall be provided in accordance with the requirements of the Land Use By-law.
- 3.8.3 The parking space arrangement shown on P2 Parking Level (Schedule H) and P1 Parking Level (Schedule I) may be modified provided that the requirements of 3.8.1 and 3.8.2 are met.

### 3.9 Landscaping

- 3.9.1 Prior to the issuance of a Development Permit and Building Permit for the construction of the building, the Developer shall provide the Municipality with a detailed landscape plan, prepared by a Landscape Architect, which shall include design specifications and cost estimates for landscaping on the Lands. Landscaping shall be in general conformity with the Landscaping Plan (Schedule C) and shall be subject to the approval of the Development Officer.



- 3.9.2 Prior to issuance of the first Occupancy Permit, the Developer shall submit to the Development Officer a letter prepared by a Landscape Architect or other qualified professional certifying that all landscaping has been completed on the Lands according to the terms of this Agreement.
- 3.9.3 Notwithstanding clause 3.9.2, the first Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein, and as approved by the Development Officer. Should the Developer not complete the landscaping within 12 months of issuance of the first Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this Section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification by a Landscape Architect.
- 3.9.4 It is the responsibility of the Developer to ensure that the underground parking structure and rooftop terraces are capable of supporting the loads from all landscaping as well as the anticipated mature weight of the plant material.

### **3.10 Building Lighting**

- 3.10.1 This Agreement shall not oblige the Developer to illuminate the building, but where the building is illuminated, such illumination shall generally comply with the Schedules.
- 3.10.2 Lighting for signage, walkways, patios, balconies, and entrances shall be permitted and is not subject to 3.10.1.
- 3.10.3 The lighting pursuant to 3.10.1 and 3.10.2 shall be directed away from surrounding properties, including municipal right-of-ways except to the extent as shown on the Schedules.
- 3.10.4 Lighting shall be white in colour and shall not include illumination that flashes, moves, or varies in intensity.

### **3.11 Signage**

- 3.11.1 Signs, excepting information signs, shall be related to businesses within the building.
- 3.11.2 Signs shall be externally illuminated, excepting that signage comprised of individual lettering may be backlit.
- 3.11.3 Signs shall not include any animation or illumination that flashes, moves, or varies in intensity.
- 3.11.4 Signs are permitted on the following parts of the building:
  - (a) upon awnings, in general compliance with the Schedules;
  - (b) above storefront windows and entrances, as fascia signs, upon the band above the first floor, to a maximum height of 3 feet; and
  - (c) upon or behind 1<sup>st</sup> floor windows provided they occupy a maximum of 30 percent of that window's area.
- 3.11.5 Information signs are permitted on all parts of the building.

### **3.12 Outdoor Storage and Display**

- 3.12.1 No outdoor storage or outdoor display shall be permitted.

### **3.13 Solid Waste**

- 3.13.1 Unless otherwise agreed to or required by the Municipality pursuant to 1.3.1, the Developer shall be responsible for solid waste collection from the building.
- 3.13.2 Unless otherwise agreed to or required by the Municipality pursuant to 1.3.1, the building shall include a designated space for four stream (refuse, recycling, cardboard, and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Official in consultation with Solid Waste Resources.

### **3.14 Deliveries and Solid Waste Collection**

- 3.14.1 Unless otherwise agreed to or required by the Municipality pursuant to 1.3.1, the private collection of refuse and recyclables and deliveries shall occur between the hours of 7:00 a.m. and 9:00 p.m..

### **3.15 Construction/Sales Structure**

- 3.15.1 A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development. The structure shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

### **3.16 Maintenance**

- 3.16.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/salting of walkways and driveways.

### **3.17 Requirements Prior to Approval**

- 3.17.1 Unless otherwise agreed to or required by the Municipality pursuant to a separate regulation or by-law, prior to the application for any municipal permits for the building, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional) process, as outlined by the Municipality.
- 3.17.2 Prior to the issuance of a Development Permit and a Building Permit for the building, the Developer shall provide the following to the Development Officer:
- (a) Written certification and plans from a Professional Surveyor that the proposed development conforms with the view plane requirements of the Land Use By-law;
  - (b) A detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.9 of this Agreement; and

- (c) Confirmation of the undergrounding arrangement in accordance with Section 4.2 of this Agreement.
- 3.17.3 Prior to the issuance of a Development Permit and a Building Permit for the construction of the building, the Developer shall consolidate the lands into 1 lot.
- 3.17.4 Prior to the issuance of an Occupancy Permit for any of the components of the development on the Lands, the Developer shall provide the following to the Development Officer:
- (a) Written certification and plans from a Professional Surveyor that the completed building complies with the view plane requirements of the Land Use By-law; and
  - (b) Certification from a Landscape Architect that the Developer has complied with Section 3.8 of this Agreement.
- 3.17.5 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licences, and approvals required to be obtained by the Developer pursuant to this Agreement.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 General Provisions**

- 4.1.1 All construction shall conform to the Municipal Services Specifications unless otherwise varied by this Agreement and shall receive written approval from the Development Engineer prior to undertaking any work.
- 4.1.2 Any disturbance to existing off-site infrastructure resulting from the development, including 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 Municipal Engineer.

## **4.2 Underground Services**

- 4.2.1 The Developer agrees to place all primary and secondary utility services (electrical and communication distribution systems) underground. In addition to being responsible for the full cost of placing secondary services underground, the Developer agrees to pay for all infrastructure costs required to place the primary utility services underground that are currently above ground within those portions of Morris Street and Hollis Street which abut the Lands. The Developer is responsible for meeting the requirements of applicable utility companies.
- 4.2.2 The Municipal Engineer may waive or alter the requirements of 4.2.1 where improvements to utility services are necessary that are beyond the obligations of the Developer as specified in clause 4.2.1 and the Developer is unable to secure such improvements from an applicable utility provider.

## **4.3 Proposed Encroachments**

- 4.3.1 Any proposed building encroachments into the street rights-of-way, illustrated on the attached Schedules or otherwise, shall be subject to separate Municipal approval pursuant to 1.3.1.

## **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

### **5.1 Archaeological Monitoring and Protection**

- 5.1.1 The Lands fall within the High Potential Zone for Archaeological Sites identified by the Province of Nova Scotia. The Developer agrees to contact the Curator of Special Places, Heritage Division, Tourism, Culture, and Heritage prior to any disturbance of the site and to comply with the requirements set forth by the Province of Nova Scotia in this regard.

### **5.2 Sulphide Bearing Materials**

- 5.2.1 The Developer agrees to comply with the legislation and regulations of the Province of Nova Scotia with regards to the handling, removal, and disposal of sulphide bearing materials, which may be found on the Lands.

## **PART 6: AMENDMENTS**

### **6.1 Substantive Amendments**

- 6.1.1 Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

### **6.2 Non-substantive Amendments**

- 6.2.1 The following items are considered by both Parties to be non-substantive and may be amended by resolution of Council:
- (a) Changes to the exterior materials and colours of the building as shown on the Schedules;
  - (b) Changes to the land use requirements specified in Section 3.3;
  - (c) Changes to the awning provisions specified in Section 3.5;
  - (d) Changes to the roof mounted mechanical and telecommunication equipment provisions specified in Section 3.6;
  - (e) Changes to the functional elements provisions specified in Section 3.7;
  - (f) Changes to the parking provisions specified in Section 3.8;
  - (g) Changes to the landscaping provisions specified in Section 3.9 and including the Landscaping Plan (Schedule C);
  - (h) Changes to the building lighting provisions specified in clauses 3.10.1, 3.10.2, and 3.10.4.
  - (i) Changes to the signage provisions specified in Section 3.11, including the Schedules;
  - (j) Changes to the requirements prior to approval specified in Section 3.17;

- (k) Changes to the requirements for underground services specified in Section 4.2;
- (l) Changes to the date of commencement of development specified in Section 8.3; and
- (m) Changes to the date of completion of development specified in Section 8.4.

## **PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **7.1 Enforcement**

- 7.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four (24) hours of receiving such a request.

### **7.2 Failure to Comply**

- 7.2.1 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:
  - (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
  - (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;

- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or,
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

## **PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **8.1 Registration**

- 8.1.1 A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia and the Developer shall incur all cost in recording such documents.

### **8.2 Subsequent Owners**

- 8.2.1 This Agreement shall be binding upon the Parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.
- 8.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

### **8.3 Commencement of Development**

- 8.3.1 In the event that development on the Lands has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 8.3.2 For the purposes of Subsection 8.3.1, commencement of development shall mean the installation of the foundation for the building.
- 8.3.3 For the purpose of Subsection 8.3.1, Council may consider granting an extension of the commencement of development time period through a



resolution under Section 6.2.1, if the Municipality receives a written request from the Developer at least 60 calendar days prior to the expiry of the commencement of development time period.

**8.4 Completion of Development**

8.4.1 Upon the completion of the development or portions thereof, or after 6 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) Retain the Agreement in its present form;
- (b) Negotiate a new Agreement; or,
- (c) Discharge this 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 the Council shall apply appropriate zoning pursuant to the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

SIGNED, SEALED AND DELIVERED	)	<u>ROCKSTONE INVESTMENTS LIMITED</u>
in the presence of	)	
_____	)	Per: _____
	)	
	)	
SEALED, DELIVERED AND	)	
ATTESTED to by the proper	)	
signing officers of Halifax Regional	)	<u>HALIFAX REGIONAL MUNICIPALITY</u>
Municipality duly authorized	)	
in that behalf in the presence	)	Per: _____
of	)	MAYOR
_____	)	
	)	Per: _____
	)	MUNICIPAL CLERK

**Attachment A2 - Email from District 12 Planning Advisory Committee**

**From:** Heather Ternoway  
**To:** Gail Harnish <harnisg@halifax.ca>  
**Date:** June 1, 2009  
**Subject:** Re: Case 01162 - Development Agreement, Hollis & Morris Street

Hi Gail,

We met last night to discuss out list of items / questions for the supplementary report.

In order to make a more informed / confident recommendation, we would like clarification on a few matters:

**MATERIALS**

A number of options for materials are proposed for various parts of the building (i.e. stone vs. stone-like materials, precast concrete vs. aluminum cladding, red vs. clear glass balconies, etc.).

We would like to know specifically:

- Which materials will actually be used in construction
- What the determining factors are (as well as who makes the decision) about which building materials are ultimately used
- More details on the materials to be used for the balconies and how they will be constructed (Do the balconies have exposed steel framing or are they completely glass clad? Will the undersides be untreated exposed concrete?)
- Planning staff's evaluation of how the specific materials to be used will comply with Policy 5.6.1

**BLANK WALL**

As noted at our May 25 meeting, we have concerns over the blank wall facing south (the building which houses the parking garage entrance).

We would be interested in more details regarding staff's rationale for considering a blank wall in this development.

**BUILDINGS OF HISTORIC SIGNIFICANCE**

As discussed at our recent meeting, we have concerns that the City did not follow through on Policies 3.2, 3.1.1 and 3.1.2 (in Section 3, Conservation of Buildings and Special Features). We understand that the buildings on the site were scored and recommended for registration. We would like more information on the history of the properties to be included in the supplementary report (when these were scored, why they were not registered, why when the buildings were purchased the significance of the buildings and opportunity to register them was not clearly articulated, etc.)

In addition, we feel that 1267 Hollis Street is of particular importance, and have over the past year encouraged the developer to retain / incorporate this building into the proposed development. We would like to know if a feasibility study was ever done regarding the retention and restoration of this significant building as part of the new development. If such a study has been done, we would like to see it.

**ARCHITECT / DESIGN TEAM**

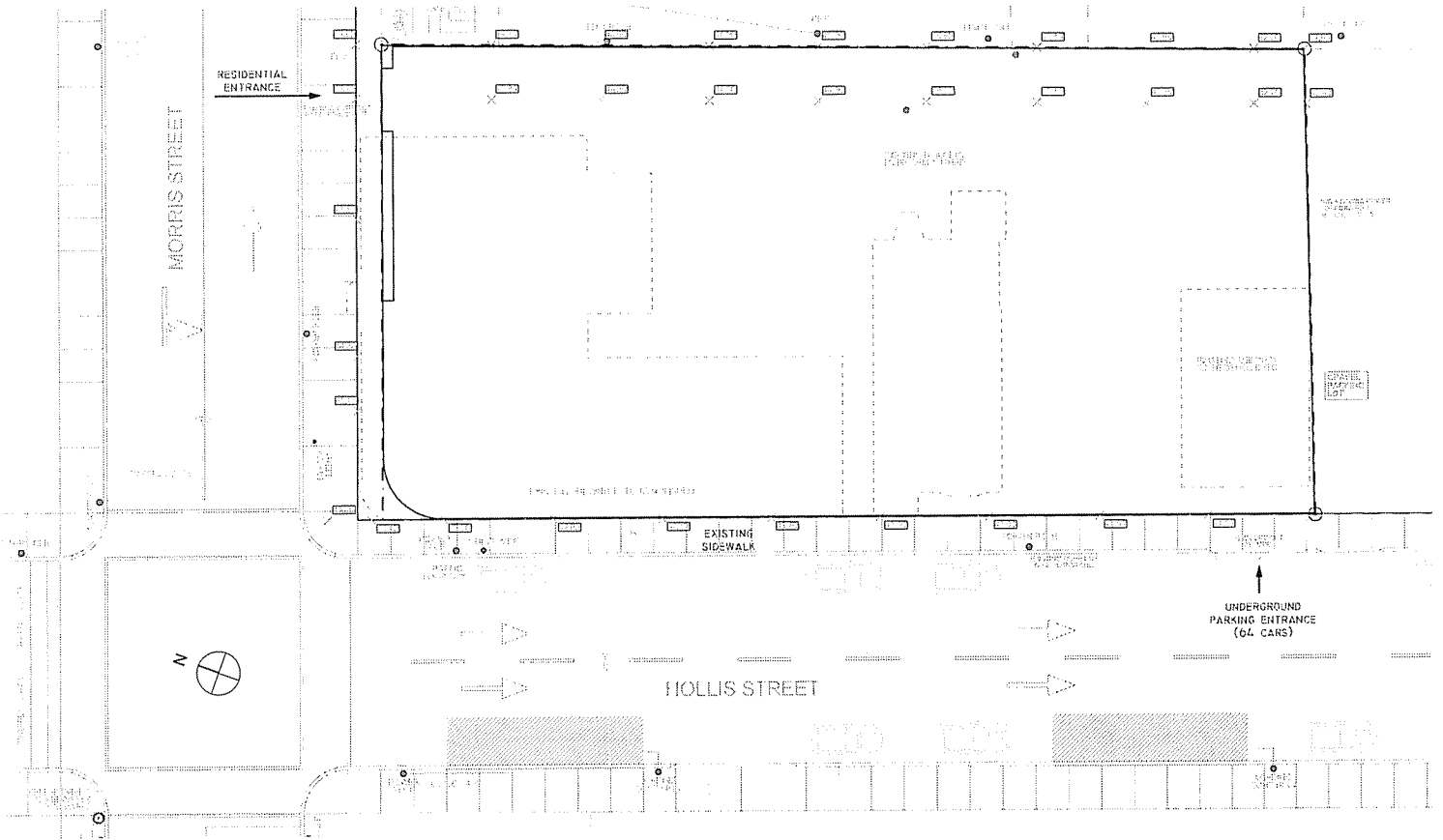
Finally, we would like to know who the architect / design team is. We noted that the drawings included with the development agreement are not stamped / credited to a particular firm.

Thank you for providing these further details. We feel that if this building is indeed of the highest quality, it could set the tone for new development and infill in the surrounding neighbourhood. We would like to have confidence that through the development agreement there will be greater clarity and accountability to using the best and longest lasting materials, that reinforce the character and quality of the neighbourhood. In order to properly evaluate this proposal against existing policies, we feel that further details on the above-mentioned aspects, in particular the materials, is required.

Cheers,  
Heather

On 26-May-09, at 8:27 AM, Gail Harnish wrote:

> As a follow-up to last night's meeting, please email your list of items you would like to be considered in the supplementary report by end of day next Monday (June 1st). thanks

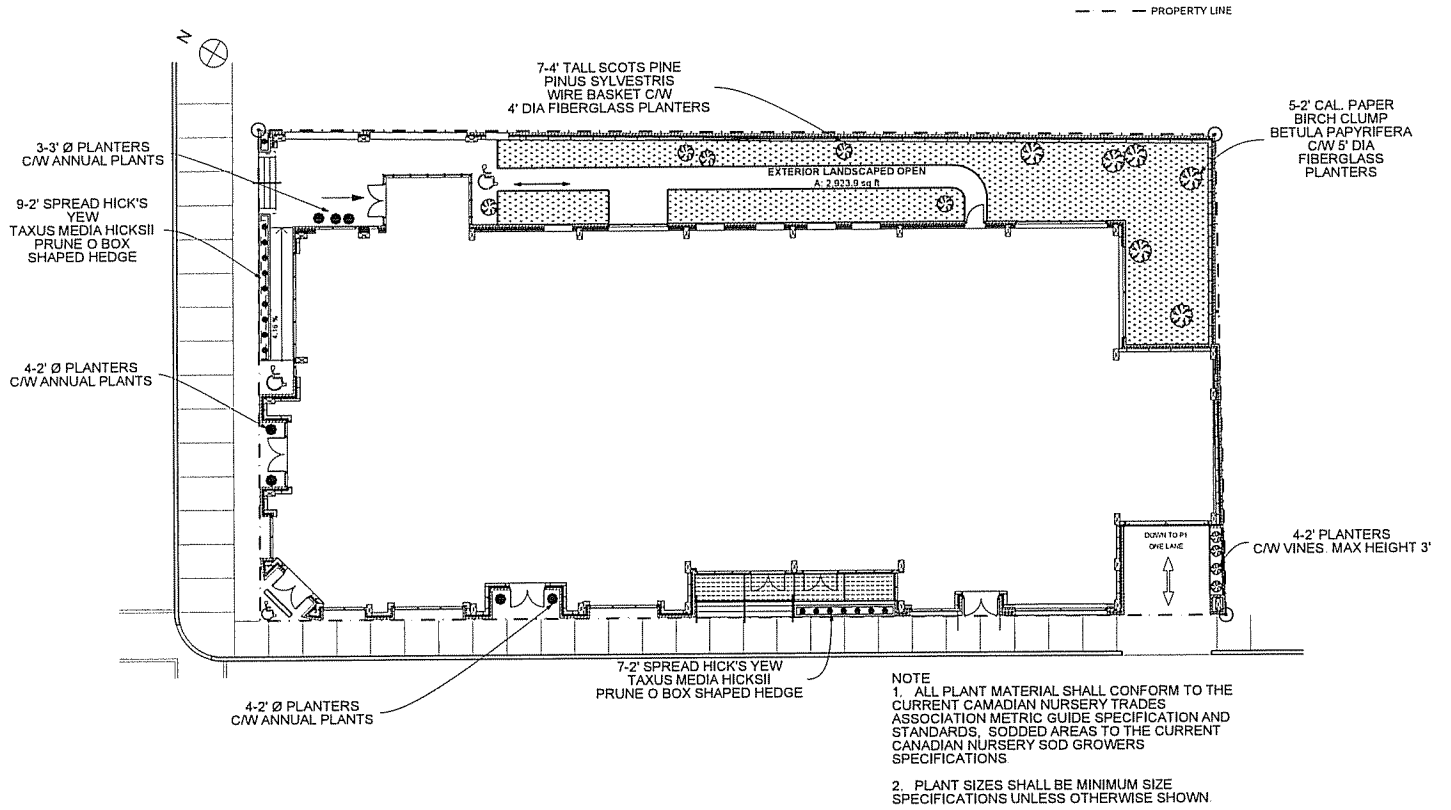


1/16" = 1'-0"

SITE PLAN

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SCHEDULE: **B**



1/16" = 1'-0"

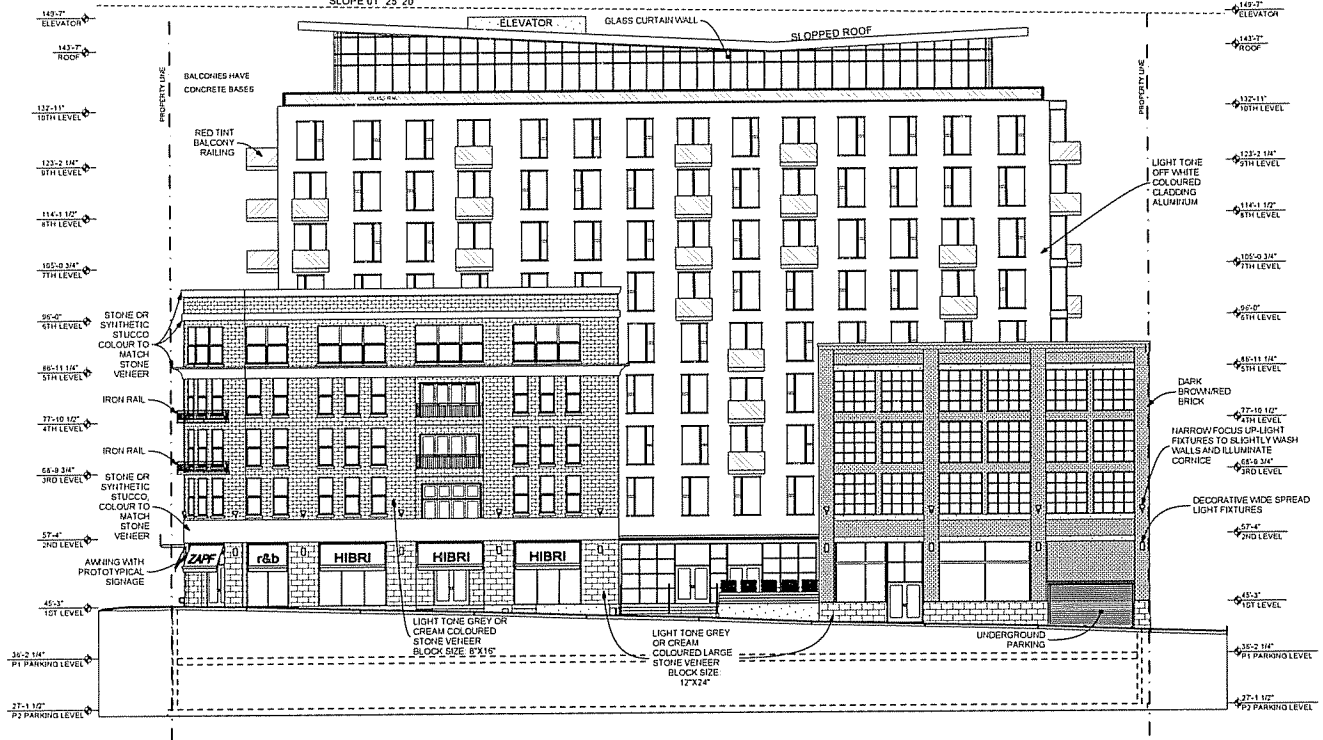
1ST LEVEL PLANTING PLAN

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Plotted on 6/7/2009 at 4:50 PM

SCHEDULE: C

VIEW POSITION "C" CITADEL HILL  
SLOPE 01° 29' 20"

NOTE: GLASS CURTAIN WALL, WINDOWS AND DOORS SHALL BE COMPRISED OF TRANSPARENT GLASS

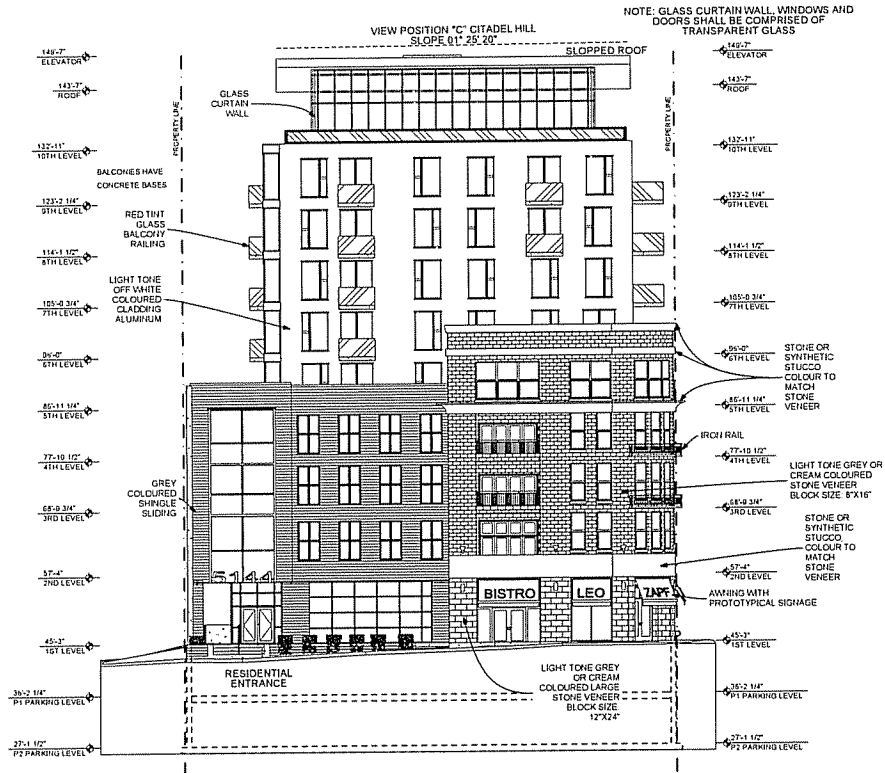


1/16" = 1'-0"

BUILDING ELEVATION (HOLLIS STREET)

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SCHEDULE: D

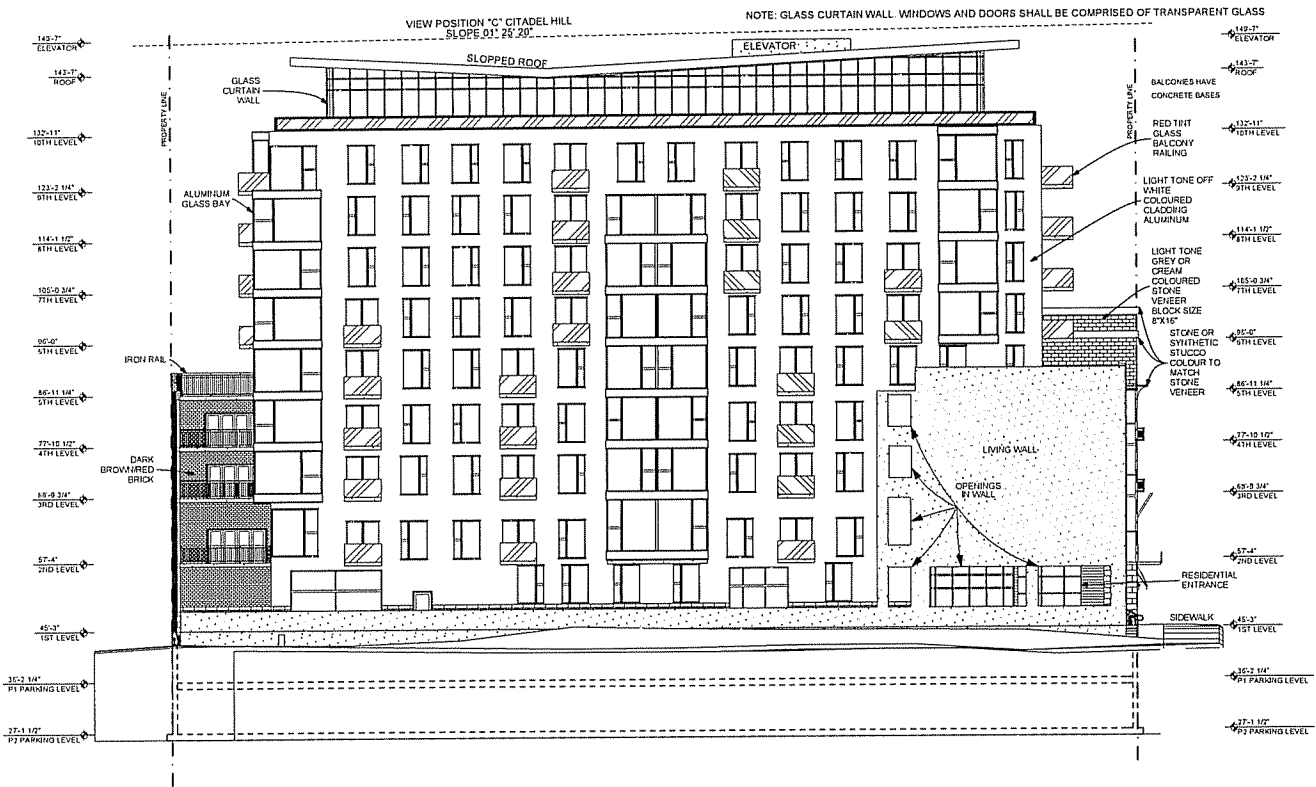


1/16" = 1'-0"

BUILDING ELEVATION (MORRIS STREET)

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SCHEDULE: E

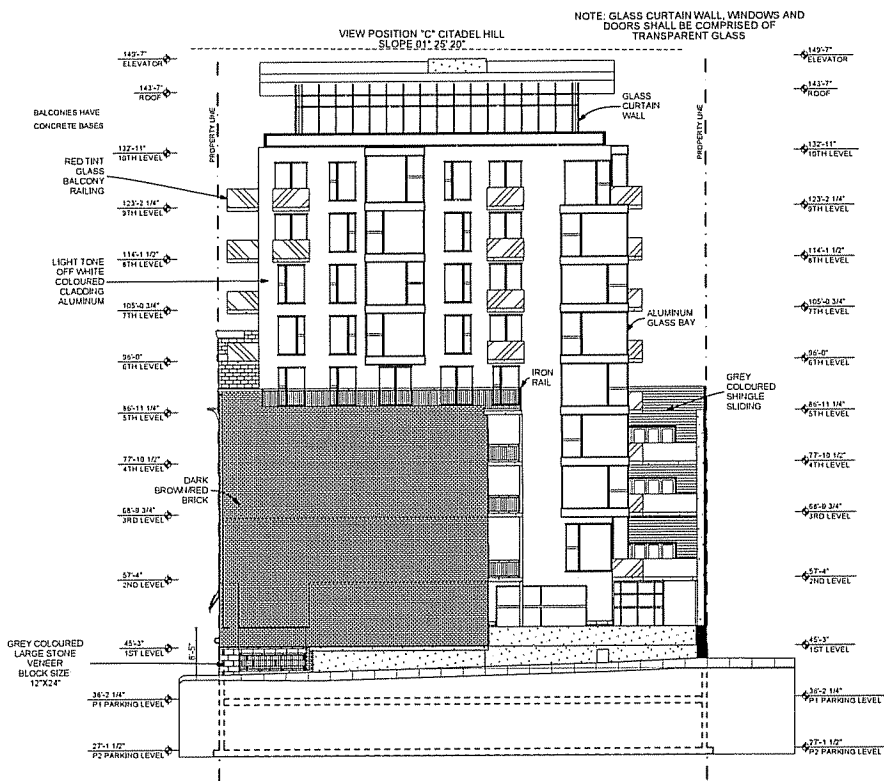


1/16" = 1'-0"

BUILDING ELEVATION (LOWER WATER STREET) SCALE IF PRINTED ON 11X17 PAPER  
Plotted on 6/7/2009 at 4:50 PM

SCHEDULE: F



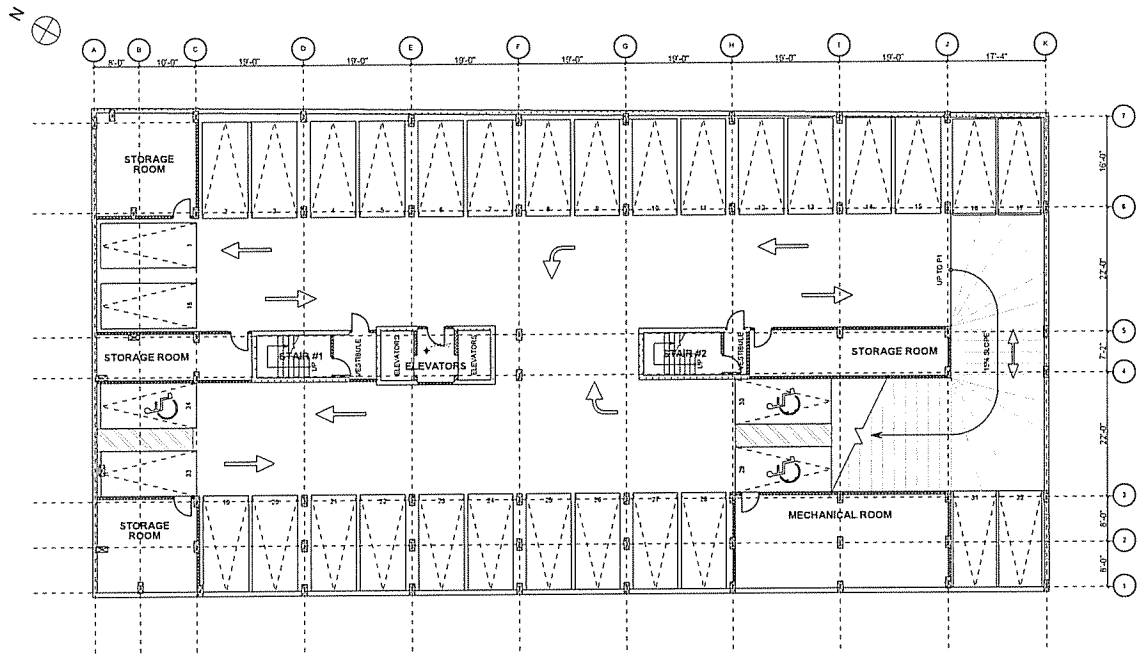


1/16" = 1'-0"

BUILDING ELEVATION (TERMINAL ROAD)

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SCHEDULE: **G**

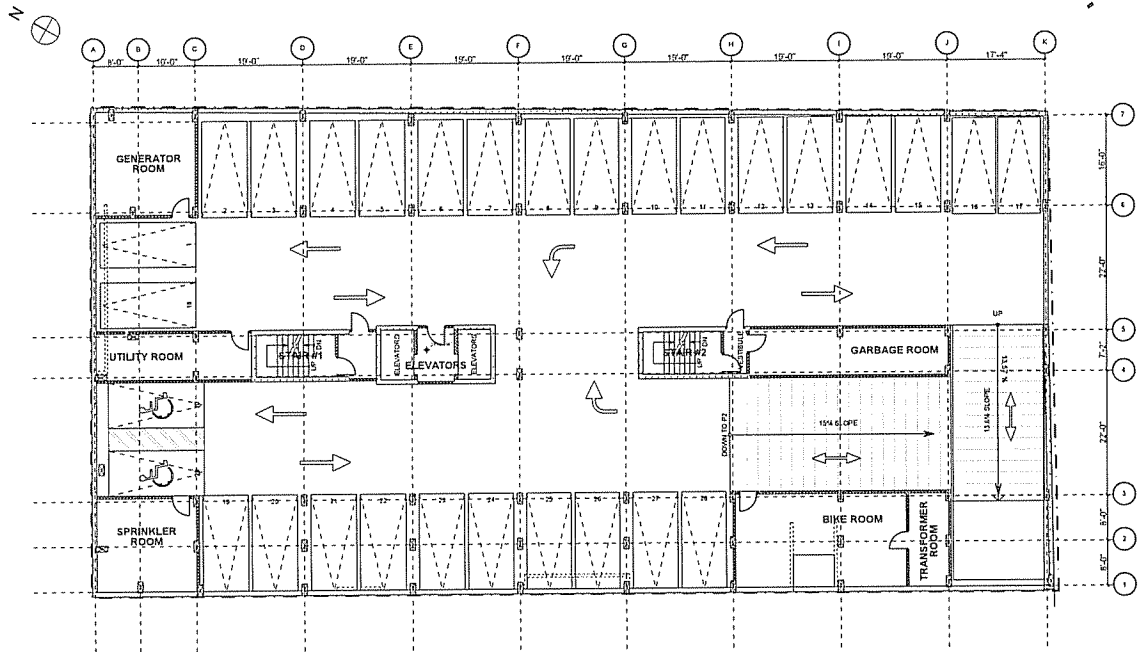


1/16" = 1'-0"

P2 PARKING LEVEL (EL.:27'-1 1/2")

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SCHEDULE: H

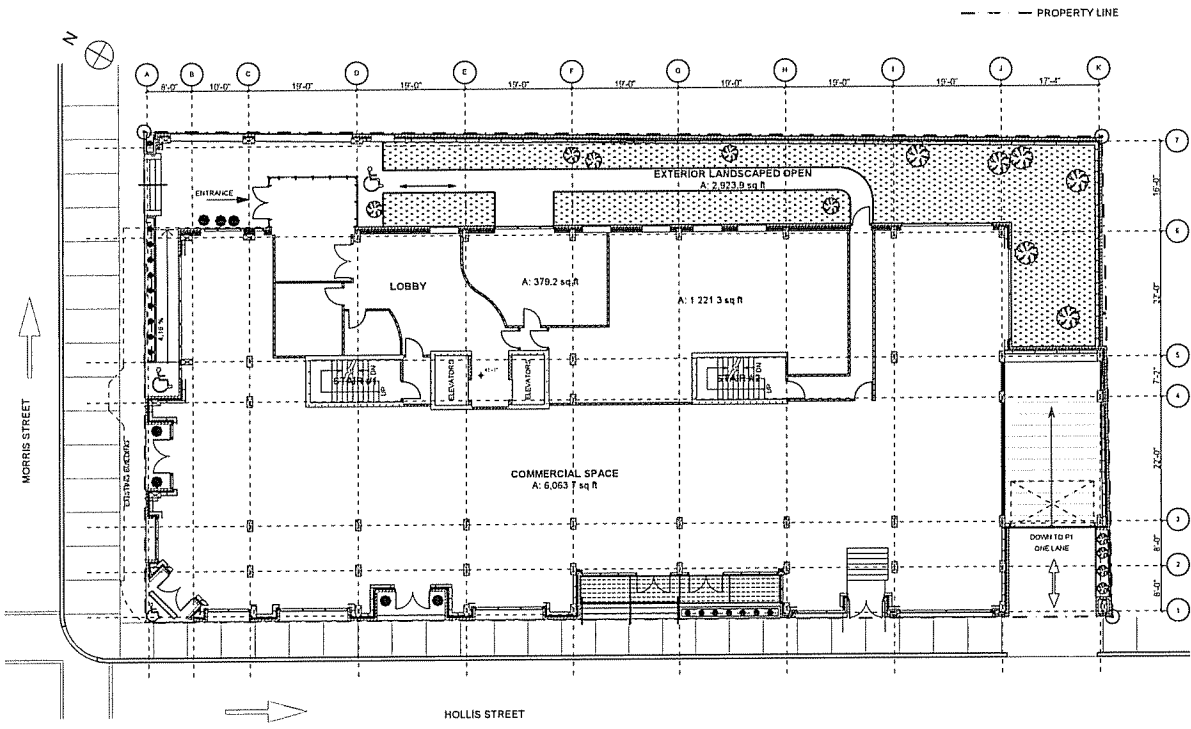


1/16" = 1'-0"

P1 PARKING LEVEL (EL:36'-2 1/4")

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SCHEDULE: I

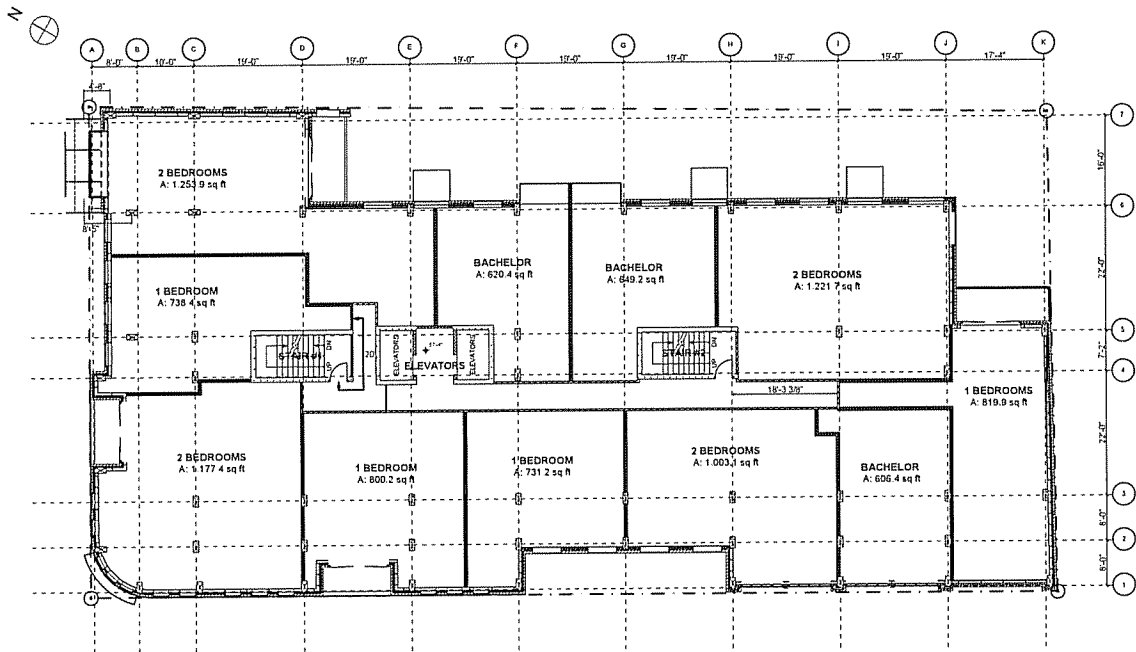


1/16" = 1'-0"

1ST LEVEL (EL:45'-3")

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SCHEDULE: J

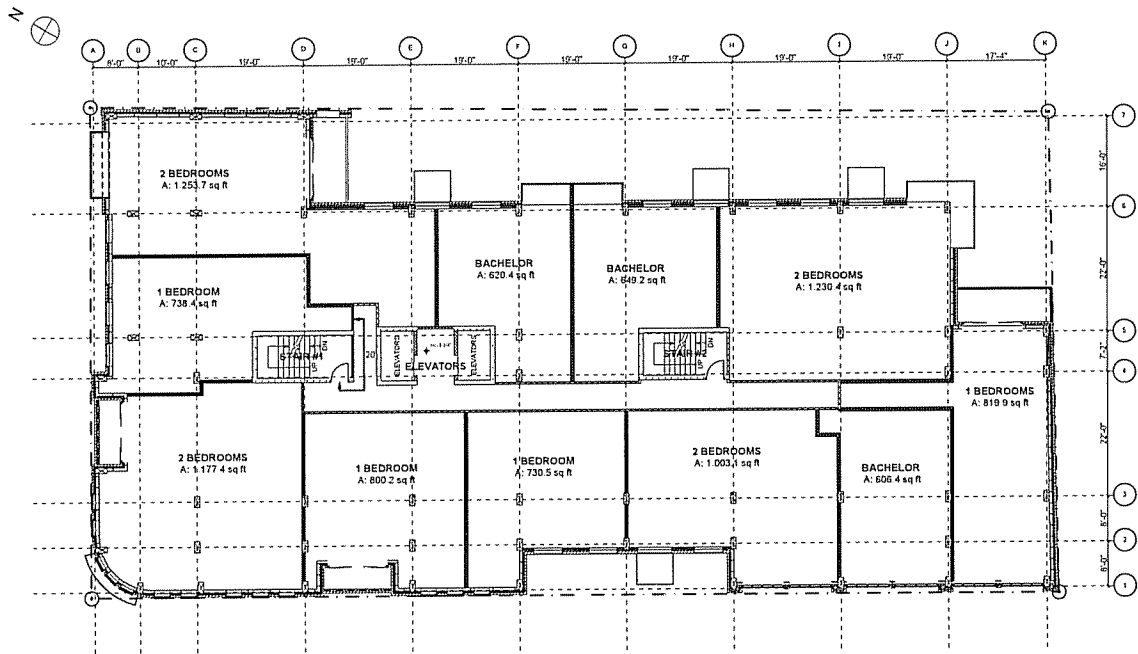


1/16" = 1'-0"

2ND LEVEL (EL: 57'-4")

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SCHEDULE: K

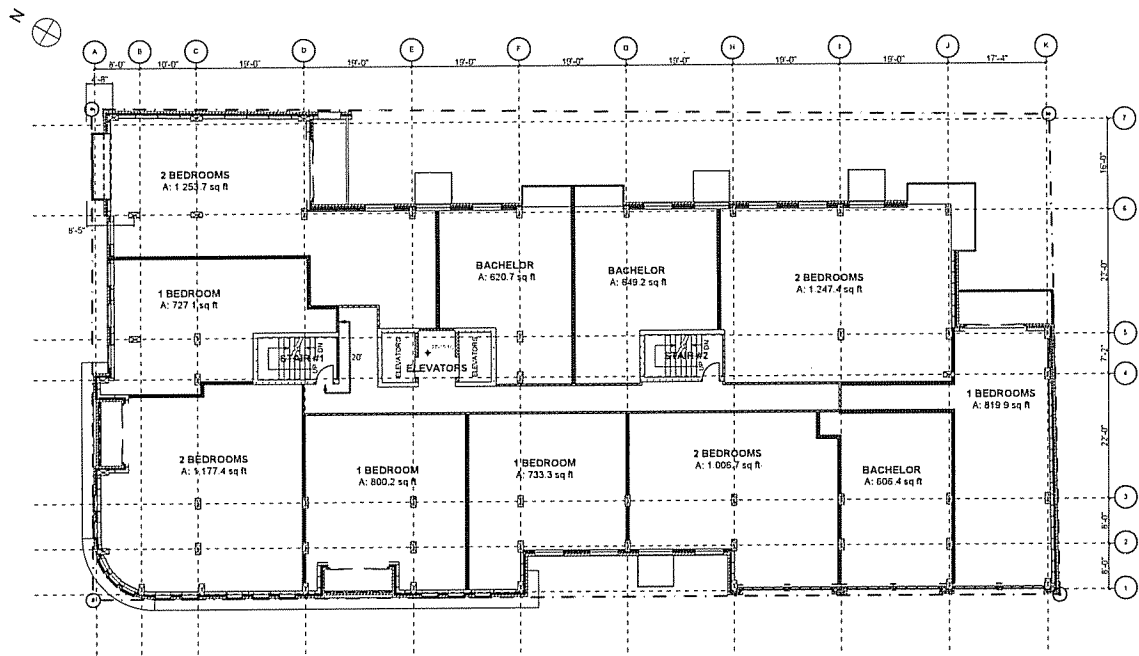


1/16" = 1'-0"

3RD LEVEL (EL:68'-9 3/4")

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SCHEDULE: L

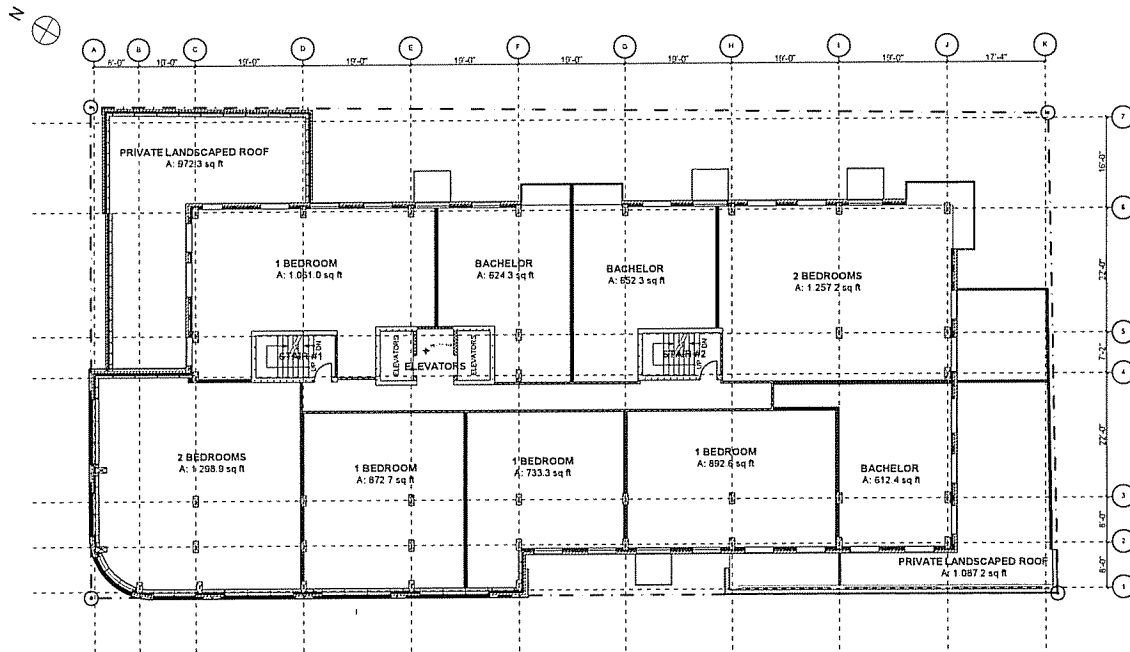


1/16" = 1'-0"

4TH LEVEL (EL: 77'-10 1/2")

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SCHEDULE: **M**



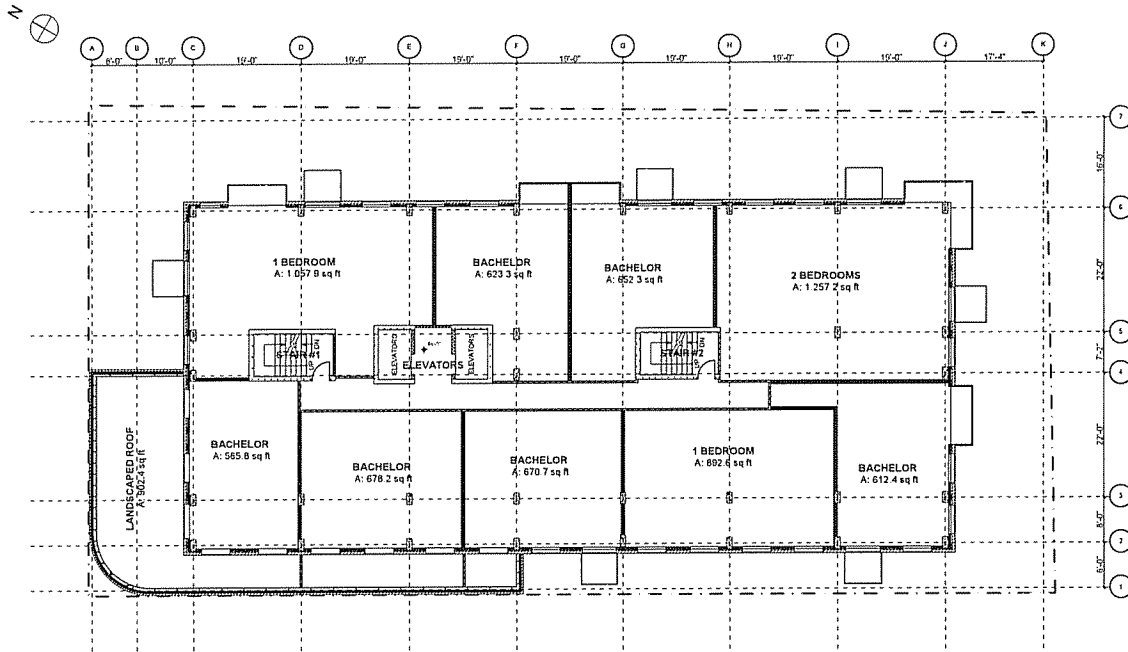
1/16" = 1'-0"

5TH LEVEL (EL: 86'-11 1/4")

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SCHEDULE: N



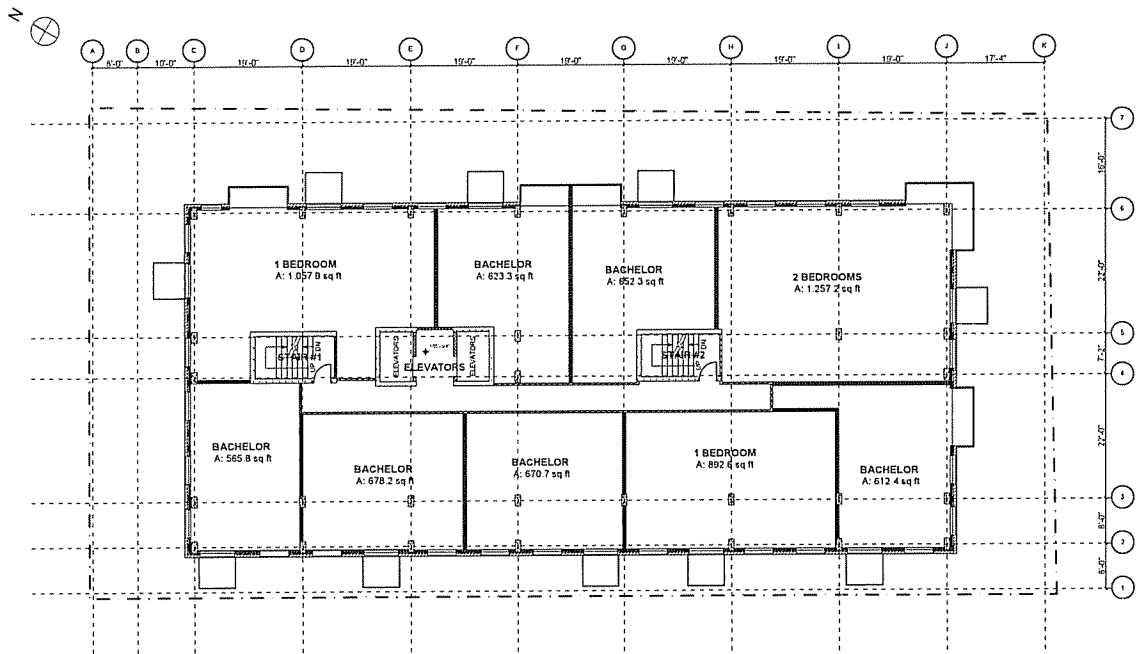


1/16" = 1'-0"

6TH LEVEL (EL:96'-0")

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SCHEDULE: O

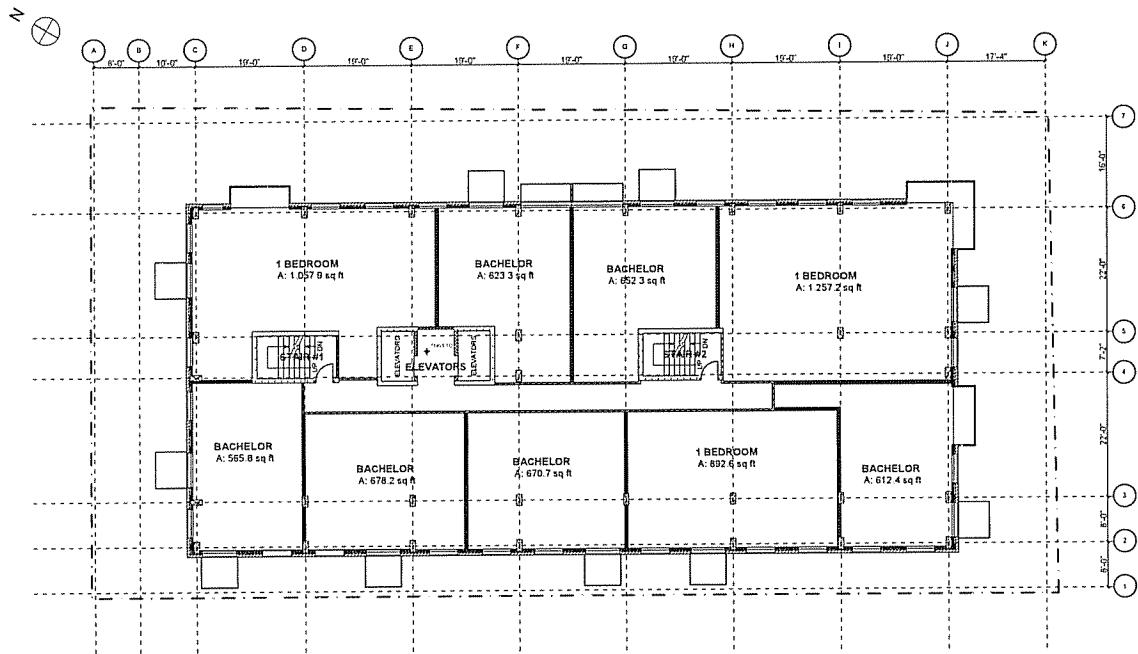


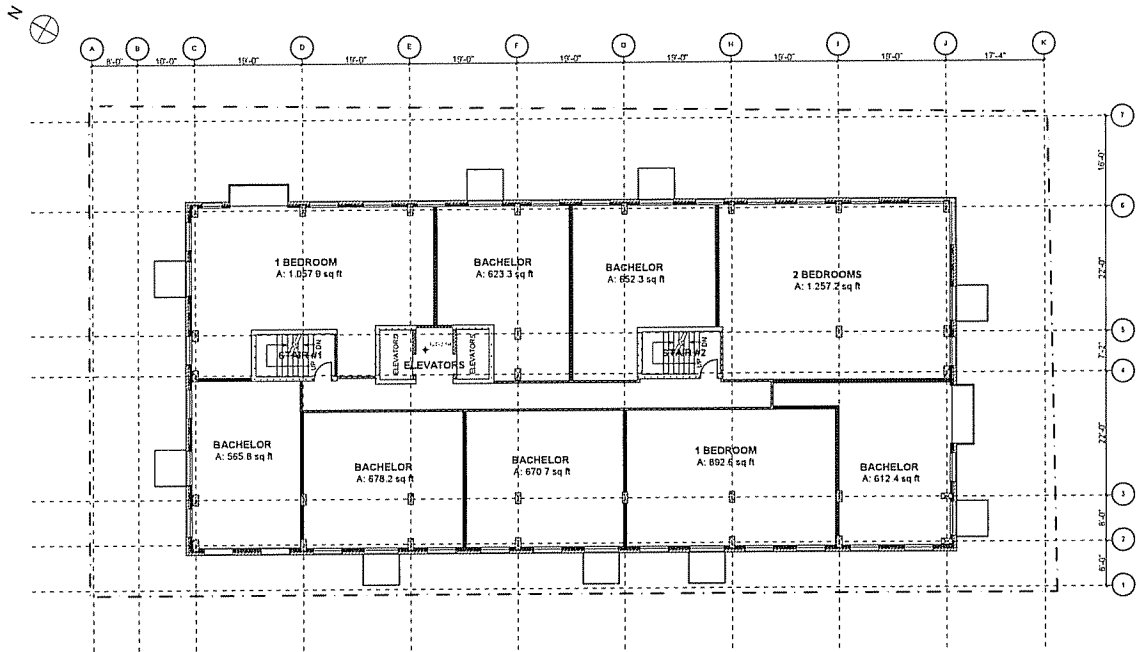
1/16" = 1'-0"

7TH LEVEL (EL:105'-0 3/4")

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SCHEDULE: P



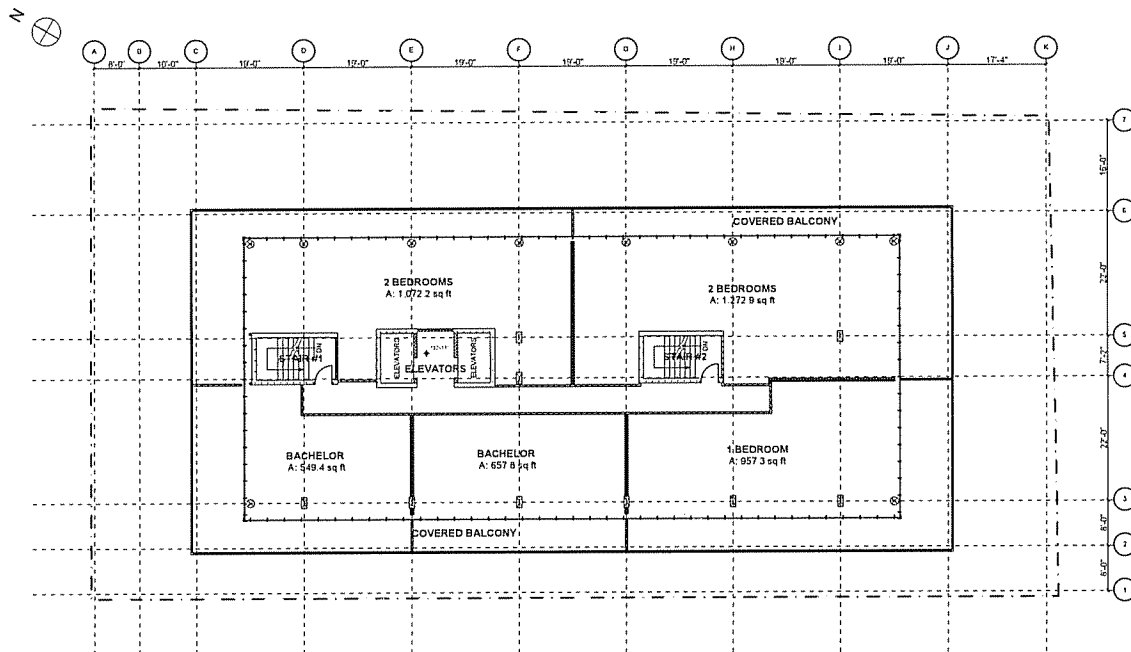


1/16" = 1'-0"

9TH LEVEL (EL: 123'-2 1/4")

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SCHEDULE: R

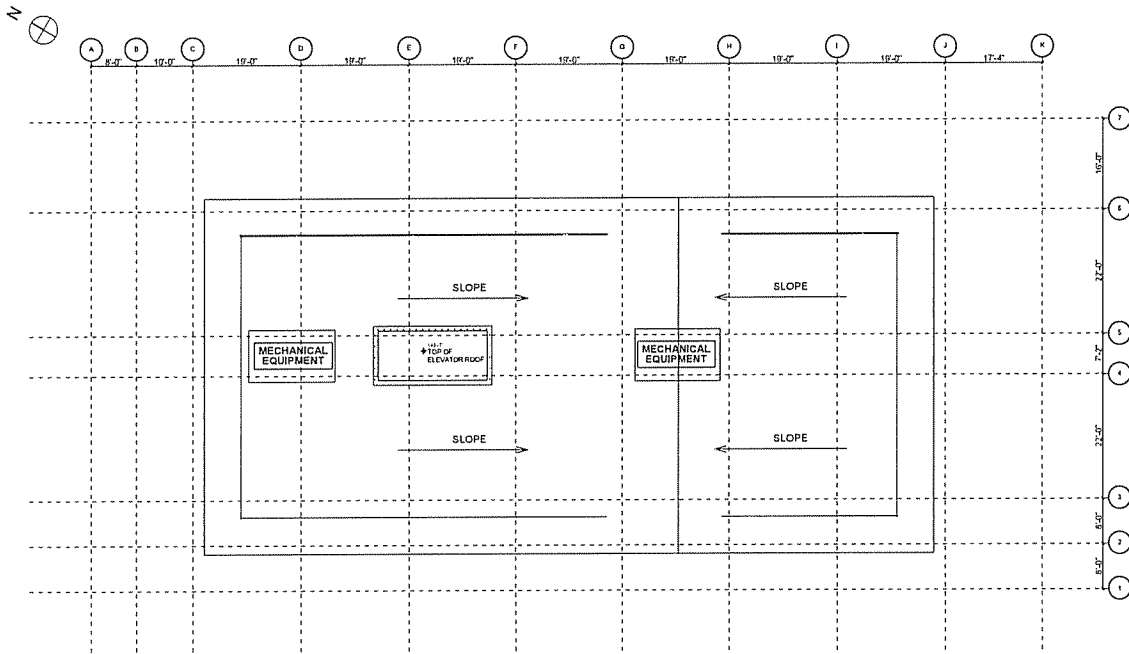


1/16" = 1'-0"

10TH LEVEL (EL:132'-3")

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SCHEDULE: **S**



1/16" = 1'-0"

ROOF LEVEL (EL: SLOPPED)

SCALE IF PRINTED ON 11X17 PAPER  
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SCHEDULE: T