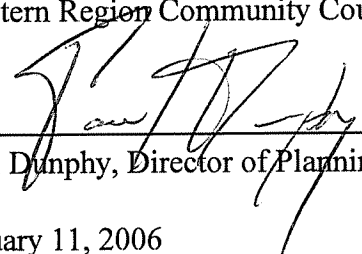


**Western Region Community Council
January 16, 2006**

TO: Western Region Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Planning & Development Services

DATE: January 11, 2006

SUBJECT: Case 00640: Development Agreement - 7990 St. Margarets Bay Road, Ingramport

SUPPLEMENTARY REPORT

ORIGIN

- Application by Destiny Developments Ltd;
- Staff Report dated October 13, 2005; and,
- Motion of Western Region Community Council on November 28, 2005 requesting a revised draft development agreement.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Approve the development agreement, as set out in Attachment A, to permit 12 townhouse style dwelling units, and private amenity and recreation space at 7990 St. Margarets Bay Road in Ingramport (PID 40731606).
2. Discharge DA-1&3-05-91-01 and amending agreement DA-1&3-12-95-01-A1 to take effect upon the registration of the subject development agreement; and,
3. Require that the development agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, whichever is later, including applicable appeal periods; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The Motion:

On November 28, 2005, Western Region Community Council made the following motion:

"that the Western Region Community Council direct staff to negotiate with the developer for a reduction in the number of condo units and that the marina, public wharf, breakwater and finger piers be deleted from the proposal. A supplementary report is requested for the January 23, 2006 meeting."

The Revised Proposal:

The applicant has revised the proposal so that it is now comprised of:

- 12 townhouse style dwelling units;
- an accessory building;
- private amenity space (common building, swimming pool, pool hut, and 2 gazebos); and,
- a private wharf for use by the residents of the Condominium Corporation.

The components of the revised development are illustrated on plans attached to the draft development agreement as Schedules "B" to "G".

DISCUSSION

The applicant has dramatically revised its proposal by removing the marina component and reducing the number of dwelling units from 17 to 12. Based upon this and other changes, staff is of the opinion that the revised proposal meets the intent of the November 28 motion of Council.

Furthermore, these changes represent a reduction of the proposal before Council on November 28 and as such, the project remains consistent with applicable policies of the Municipal Planning Strategy. Staff therefore recommend approval of the attached development agreement.

BUDGET IMPLICATIONS

None

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. Council may approve the entire development agreement. This is the staff recommendation.
2. Council may choose to alter the terms of the development agreement. This may necessitate further negotiations with the applicant, and may require an additional public hearing.

3. Council may refuse the entire development agreement. Pursuant to Section 230(6) of the Municipal Government Act, Council must provide reasons for this refusal, based on the policies of the MPS. This alternative is not recommended, based on staff's finding that the proposed development agreement is consistent with policies of the MPS.

ATTACHMENTS

Attachment A Draft Development Agreement

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Luc Ouellet, Planning Services, 490-3689

ATTACHMENT A
THIS AGREEMENT made this day of , 2006

BETWEEN:

DESTINY DEVELOPMENTS INC.,
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate, in the County of
Halifax, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 7990 St. Margarets Bay Road, Ingramport (PID # 40731606), being Lot 1H and which said lands are more particularly described in Schedule "A" hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow twelve (12) multiple dwelling units and private amenity and recreation space on the Lands pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Land Use By-law for Planning Districts 1&3 (St. Margarets Bay);

AND WHEREAS the Western Region Community Council approved this request at a meeting held on , 2006 and referenced as Municipal Case Number 00640 and at the same meeting, approved the request for the discharge of the existing Development Agreement on the Lands DA-1&3-05-91-01 (filed in the Registry of Deeds in Book No. 5158, Pages 313-321) and Amending Agreement DA-1&3-12-95-01-A1 (filed in the Registry of Deeds in Book No. 5787, Pages 207-213), said discharges to take effect upon the registration of this Agreement;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Land Use By-law for Planning Districts 1&3 (St. Margarets Bay), as may be amended from time to time.

1.3 Applicability of Subdivision By-law

Except as otherwise provided for herein, the subdivision of the Lands shall comply with the requirements of the Subdivision By-law for Halifax County, as may be amended from time to time.

1.4 Applicability of Other By-laws, Statutes and Regulations

Pursuant to Sections 1.2 and 1.3, 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 Province of Nova Scotia or the Government of Canada, and the Developer or lot owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

1.5 Conflict

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.

1.6 Costs, Expenses, Liabilities and Obligations

The Developer and each lot owner 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 regulations, by-laws or codes applicable to any lands owned by the Developer or lot owner.

1.7 Provisions Severable

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 Height

Height means the vertical distance of a building between the average established grade and the highest point of the roof surface.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1. Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is substantially in conformance with plans filed in the Halifax Regional Municipality as Case 00640 and attached as the following Schedules to this Agreement:

- Schedule 'A' Legal Description of the Lands
- Schedule 'B' Site Plan (0064000019)
- Schedule 'C' Elevations of Mahone Bay Building (0064000017)
- Schedule 'D' Typical Cross Section of a Dwelling Unit (0064000016)
- Schedule 'E' Typical Basement Floor Plan of a Dwelling Unit (0064000012)
- Schedule 'F' Typical First Floor Plan of a Dwelling Unit (0064000013)
- Schedule 'G' Typical Second Floor Plan of a Dwelling Unit (0064000014)

3.2 General Description of Land Use

- 3.2.1 The Developer shall not develop or use the Lands for any purpose other than a maximum of twelve (12) dwelling units ; an accessory building; and private amenity and recreation space including a common building, a swimming pool, a pool hut, 2 gazebos, and a private wharf.
- 3.2.2 Prior to the issuance of occupancy permits for the final dwelling unit, the Developer shall apply for and obtain a demolition permit and shall proceed with the removal of all buildings in existence at the coming into force of this agreement (single unit dwelling, accessory building and storage shed).

3.3 Design Requirements

Dwelling Units

- 3.3.1 The architectural design of each cluster of dwelling units shall reflect building forms typical of a Nova Scotia coastal community. This shall be achieved by incorporating the architectural influence of selected communities through their form, size, details (baseboards, corner boards, window trim, support brackets and ornamentation) and materials (clap board, shingles and other natural sidings and coverings) into the design of any buildings permitted on the Property.

- 3.3.2 The residential buildings shall be clad in clap board, shingles or other natural sidings or coverings, or equivalent, at the discretion of the Development Officer. The buildings shall not be clad in vinyl siding.
- 3.3.3 Colours shall be heritage colours in keeping with the style and details of the period facades. The colour palette shall include various soft or dark shades of red, green, blue, and brick (red/brown), various light shades of yellow, blue, indigo, and green and neutral colours in various shades of white, brown, tan, and grey.
- 3.3.4 All doors shall be coloured as described in Section 3.3.3.
- 3.3.5 The windows shall be single hung, double hung, or casement constructed of a material of the Developer's choice.
- 3.3.6 Each dwelling unit may have one chimney.
- 3.3.7 All decks shall be constructed of wood on a treated sub-structure and painted or stained with a non-toxic wood preservative. The decks shall neither extend through the view plane of the Bay from the neighbouring unit, nor obstruct the walking trails on the site.
- 3.3.8 The size of each dwelling unit may vary provided that the number of bedrooms in each unit does not exceed a maximum of three and that the footprint for each unit shall not exceed 1650 square feet.
- 3.3.9 There shall be no front loading garages on the site. Side or rear loading attached garages may be permitted. Side or rear loading garages shall be included as part of the footprint, as described in Section 3.3.8.
- 3.3.10 The residential buildings shall not exceed a height of 35 feet.
- 3.3.11 The site plan may be altered to allow a maximum of twelve (12) dwelling units with a maximum of four units in each block of townhouses and a maximum of six blocks. The units shall be in blocks of two, three or four. The attached site plan is an example of how this layout may look, however, variations as described in this section are permitted.
- 3.3.12 There shall be a minimum of 16 feet separation between all residential buildings.
- 3.3.13 The dwelling units shall be constructed with low flow fixtures throughout, including but not limited to low flow shower heads, low flow faucet aerators and ultra low flow insulated toilets in order to offset some of the on-site water use and such low fixtures shall be maintained in the dwelling units.

Accessory Building

- 3.3.14 One accessory building is permitted on the site and shall not exceed 750 square feet in area and 15 feet in height.
- 3.3.15 The accessory building shall be clad in clap board, shingles or other natural sidings or coverings, or equivalent, at the discretion of the Development Officer, and painted in a colour complimentary to the dwelling units. The accessory building shall not be clad in vinyl siding.

Common Building

- 3.3.16 A building, herein referred to as the common building, may be located as illustrated on Schedule 'B'. The common building may be located within the 25-foot setback from the ocean, but shall maintain a 25-foot setback from all other watercourses on the site.
- 3.3.17 The common building shall not exceed 1500 square feet in footprint and 30 feet in height.
- 3.3.18 The following uses shall be permitted in the common building: a security office, gathering/common space for the Condominium Corporation, storage space, washrooms, a kitchen and a mechanical room.
- 3.3.19 The common building shall have architectural features that fit in with the overall theme of the project including: trim around windows and doors, exterior cladding to be made of natural materials, and colours from the same colour palette as the residential buildings.
- 3.3.20 The common building shall be constructed with low flow fixtures throughout, including but not limited to low flow shower heads, low flow faucet aerators and ultra low flow insulated toilets in order to offset some of the on-site water use and such low fixtures shall be maintained in the building.

3.4 Private Amenity and Recreation Space

- 3.4.1 One in ground swimming pool may be located on the site as shown on Schedule 'B'. The pool shall have a maximum dimension of 6m by 9m. The pool shall meet the requirements of the HRM Swimming Pool By-law.
- 3.4.2 The area surrounding the pool shall be substantively landscaped with shrubs and flowers. A patio shall be constructed around the pool within the fenced area and shall be constructed of hard surfaced materials.

- 3.4.3 One pool hut may be constructed adjacent to the pool to permit the storage of the pumps and mechanical tools associated with the upkeep and maintenance of the pool. A sauna and two changing rooms with washrooms and showering facilities may be permitted in the pool hut. The pool hut shall not exceed 750 square feet in area and 15 feet in height.
- 3.4.4 Two gazebos shall be located on the property within the open space area as generally illustrated on Schedule 'B'. Each gazebo shall not exceed 350 square feet in area and 15 feet in height. The gazebos may be located within the 25-foot setback of the watercourse and ocean, but not closer than 8 feet to either body of water.
- 3.4.5 A private wharf for use by the residents of the Condominium Corporation may be constructed and attached to the Lands. Such a wharf shall meet the requirements of Fisheries and Oceans Canada, Transport Canada and the Nova Scotia Department of Natural Resources.

3.5 Parking, Circulation, and Access

- 3.5.1 The Developer agrees to provide vehicular access to the site as illustrated on Schedule 'B'. The access shall be approved by the Nova Scotia Department of Transportation and Public Works, and a copy of such approval shall be submitted to the Development Officer prior to the issuance of any Development and Building Permits. Changes to the location of the access, as necessitated by the requirements of the Nova Scotia Department of Transportation and Public Works, may be approved by the Development Officer.
- 3.5.2 The Developer agrees to provide a detailed Site Plan illustrating the parking areas and detailed drainage design to the Nova Scotia Department of Transportation and Public Works in conjunction with Development and Building Permits prior to construction.
- 3.5.3 The Developer shall construct and maintain in good repair the parking areas necessary to service the development. Parking shall be provided on-site by a combination of private driveways serving individual dwelling units and clustered parking. A minimum of 24 parking spaces shall be provided on-site, but the number of parking spaces shall not exceed 38. The attached Site Plan (Schedule 'B') is an example of how this layout may look, however, variations as described in this section are permitted at the discretion of the Development Officer.
- 3.5.4 All parking spaces shall comply with the minimum requirements of the Land Use By-law.
- 3.5.5 All parking areas, private driveways and driving aisles shall be hard surfaced or gravelled.

- 3.5.6 Changes to the location of private driveways (serving the individual dwelling units) may be permitted by the Development Officer in the case of end units having a side-loading garage.
- 3.5.7 The driving aisles shall be a minimum width of twenty (20) feet.
- 3.5.8 Any lights used for the illumination of the parking areas shall be generally located and arranged so as to divert light away from adjacent properties and minimize reflection over the water.

3.6 Landscaping

- 3.6.1 A detailed Landscape Plan prepared by a Landscape Architect (that is a full member, in good standing, of the Canadian Society of Landscape Architects) shall be submitted with the application for Building and Development Permits. The detailed Landscape Plan shall include, as a minimum, all trees to be preserved, plantings as identified in this agreement and shall identify measures to provide a buffer and/or screening between the development and adjacent residential properties, as well as for aesthetic enhancement. Where there is a dispute between the Developer and Development Officer, the matter shall be forwarded to Western Region Community Council for final determination.
- 3.6.2 Specific landscaping measures shall be provided as follows:
 - (a) All proposed retaining walls shall be constructed of a decorative precast concrete retaining wall system, boulders, or equivalent;
 - (b) The Landscape Plan shall include planting details for each type of plant material, including species list with quantities, size of material, and common and botanical names (species and variety);
 - (c) All soft landscape areas to be sodded shall use sod which conforms to the Canadian Nursery Sod Growers' Specifications;
 - (d) All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards; and
 - (e) A minimum of 30% of the trees planted on the site shall be of a coniferous variety.
- 3.6.3 Construction Details or Manufacturer's Specifications for all constructed landscaping features, such as retaining walls, exterior waste management facilities, etc, shall be provided to the Development Officer with the application for Building and Development Permits. The details and specifications shall describe their design, construction, materials, and placement so that they will enhance the design of individual buildings and the character of the surrounding area.
- 3.6.4 Overall, a minimum of fifty (50) percent of the site shall be used for open space and landscaped areas. This may consist of grassed areas, pathways, treed spaces and all other unpaved, unbuilt surface.

- 3.6.5 A minimum of ten (10) suitable salt-tolerant coniferous trees of a minimum height of 5 feet (1.52 metres) shall be located within the 50 foot setback of the northern property line to act as a buffer between the development and the adjacent single unit dwelling. A minimum of five (5) suitable salt-tolerant coniferous trees of a minimum height of 5 feet (1.52 metres) shall be located within the 50 foot setback of the southern property line to act as a buffer between the development and the adjacent single unit dwelling.

3.7 Tree Preservation

- 3.7.1 Every effort shall be made to ensure the preservation of the existing living trees, 3 inches (76 mm) or greater in diameter, designated on the Landscape Plan to be preserved on the Lands. Tree removal will be allowed for the construction of the dwelling units, common building, pool, parking areas, sewage treatment plant and other buildings, and any uses accessory to the foregoing. The Landscape Plan required in Section 3.6.1 shall identify the limits of disturbance, tree preservation areas, the location of hoarding fences and any stockpile locations.
- 3.7.2 Proper arboricultural practices shall be undertaken and shall include such activities as the erection of tree protective hoarding fences located as close to the drip-line of the trees to be preserved as possible for the duration of construction and the pruning of any damaged limbs or roots. Stockpiling of soil or materials or the movement of equipment will not be permitted within the hoarded areas. No excavation/soil disturbance within ten feet to the trunk of any tree to be preserved will be permitted.
- 3.7.3 Notwithstanding sections 3.7.1 and 3.7.2 of this Agreement, where a Certified Arborist, Landscape Architect, Landscape Technologist, Urban Forester or other person with an equivalent degree or diploma engaged by the property owner certifies in writing that a tree poses a danger to people or property or is in severe decline, the Development Officer may permit the tree to be removed. Any tree removed shall be replaced with a similar species, at the expense of the Developer.
- 3.7.4 Any trees to be preserved that are damaged or improperly removed shall be replaced, two new trees for each damaged tree, with trees of the same type and with minimum sizes of 2.4 inches diameter (60 mm) caliper for deciduous trees and minimum heights of 5 feet (1.5 metres) for coniferous trees.

3.8 Open Storage

Waste Management

- 3.8.1 The development shall include a minimum of two designated spaces for storage and collection of source separated recyclables, organics, and refuse. These designated spaces shall be approved by the Development Officer in consultation with the Building Inspector and HRM Solid Waste Resources.

- 3.8.2 Each designated space shall be a minimum of 100 square feet and a maximum of 150 square feet with neither the length nor width being less than 8 feet. The space shall be enclosed by a combination of an opaque fence, soft landscaping including trees and shrubs, and natural topography. There shall be a maximum of three such designated spaces on the site.
- 3.8.3 Each designated space shall:
- (a) Be accessible and convenient for tenants and waste haulers;
 - (b) Contain separate bins clearly identified to accept cardboard/paper, other recyclables, organics, and refuse; and,
 - (c) Be clearly identified by signage .
- 3.8.4 Private collection shall be required from the condominium development.

Boat Storage

- 3.8.5 There shall be no permanent outdoor storage of boats on the Lands, with the exception of sailing dinghies and tenders.
- 3.8.6 The Developer agrees that no sailing dinghies and tenders shall be stored on the Lands during the period between November 1st and March 31st of every year, unless all masts and rigging have been removed from the crafts.
- 3.8.7 Boat trailers in excess of 20 feet shall not be stored on the property.

3.9 Signage

Only those signs permitted by Section 5.4 of the Planning Districts 1&3 (St. Margarets Bay) Land Use By-law shall be allowed on the Lands, with the exception of the following:

- (a) Two single sided signs, not exceeding thirty two square feet in area, containing the name of the project and/or operator located at or near the driveway entrances as illustrated on Schedule 'B'; and,
- (b) An identification sign illustrating the civic number and name of the cluster, for example 'Mahone Bay Haven', with each sign having a maximum area of 12 square feet, constructed of natural materials and located in front of each cluster of dwelling units.

3.10 On-Site Water Supply

- 3.10.1 Prior to the issuance of Building and Development Permits for any of the components of this Agreement, the Developer shall carry out, to the satisfaction of the Development Officer, the program as described in Section 5.0 (Recommendations) of the Preliminary Groundwater Development Assessment report dated May 11, 2004 and prepared by Jacques Whitford Environment Limited (Project No. NSD18721-1).

This program shall include, where agreed to by any adjacent property owner, monitoring wells to the north and south of the proposed well field in keeping with Task 6 of Section 5.0 of the above referenced report, unless deemed to be unnecessary by a Professional Engineer with expertise in hydrogeological studies and confirmed by the Development Officer.

- 3.10.2 In addition to Section 3.10.1, the Developer agrees to further study the Well Interference Potential as suggested in Section 3.3.4 of the above referenced report, and if justified by the results of this further investigation, the Development Officer may require a Contingency Plan and/or Well Survey prior to the issuance of Building and Development Permits.

3.11 Private Sewage Treatment Plant

- 3.11.1 The Developer shall be responsible for the operation, maintenance, and monitoring of the private sewage treatment plant (STP) servicing the development, as per the provincial regulations until the formation and registration of a Condominium Corporation for the Lands. Once a Condominium Corporation has been legally established for the Lands, the Developer shall transfer its responsibility over the operation, maintenance, and monitoring of the STP to the Condominium Corporation.
- 3.11.2 Any lights used for the illumination of the private sewage treatment plant shall be generally located and arranged so as to divert light away from adjacent properties and minimize reflection over the water.

3.12 Watercourses

- 3.12.1 There shall be a 25-foot building setback from all watercourses on the site, with the exception of the two gazebos.
- 3.12.2 There shall be a 25-foot building setback from the ocean, with the exception of the common building and the two gazebos.
- 3.12.3 The Developer shall maintain a 25-foot building setback from all above ground, exposed portions of the watercourse running through the middle of the site. Should the Developer choose to open the watercourse where it is shown piped on Schedule 'B', prior to construction of the adjacent buildings, a 25-foot setback shall be maintained from all portions of the watercourse. At the discretion of the Development Officer, the site plan may be altered to provide for the additional setback. Should the Developer choose to open the watercourse where it is shown piped on Schedule 'B', following construction, the minimum setback from adjacent buildings shall be ten feet. Prior to altering the watercourse, the Developer shall obtain approvals from the Nova Scotia Department of Environment and Labour and any other relevant provincial or federal agencies.

- 3.12.4 The Developer shall be permitted to construct dwelling units within the 2.5-metre elevation above the ordinary high water mark.

3.13 Maintenance

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 all buildings, driving aisles, parking areas and driveways, and the maintenance of all landscaping, trimming and litter control, and snow removal/sanding of driving aisles, walkways, driveways, and parking areas.

3.14 Environmental Protection

- 3.14.1 The Developer agrees to have prepared by a Professional Engineer and submitted to the Municipality a design for a Stormwater Management System for the Lands, acceptable to the Development Officer.
- 3.14.2 The Developer agrees to have prepared by a Professional Engineer and submitted to the Municipality for review by the Development Officer, and the Nova Scotia Department of Environment and Labour (if applicable) an Erosion and Sedimentation Control Plan for the Lands. The plan shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites, as prepared and revised from time to time by the Nova Scotia Department of Environment and Labour. Specifically, this plan shall be used during active construction of the development with an emphasis on minimizing the amount of soil disturbed and the duration of exposed soil and shall be approved by the Development Officer prior to final design approval.
- 3.14.3 All earthworks and construction on the Lands shall comply with the requirements of the Stormwater Management Plan and the Erosion and Sedimentation Control Plan.
- 3.14.4 The Developer agrees to observe and comply with all HRM By-laws, and further, agrees not to commence any disturbance or removal of topsoil, excavation, grading or other site work on the Lands until a Top Soil Removal Permit has been issued by the Development Engineer.

3.15 Required Approvals

- 3.15.1 Prior to the issuance of Building and Development Permits for any of the components of this Agreement, the following shall be submitted by the Developer to the Development Officer:
- (d) Nova Scotia Department of Environment and Labour approval of a new on-site private sewage treatment plant;
 - (e) Nova Scotia Department of Environment and Labour approval of any existing or new potable water supply as a Public Drinking Water Supply; and

- (c) Nova Scotia Department of Transportation and Public Works approval of the existing or any new vehicular access from St. Margarets Bay Road.

3.15.2 In addition to the approvals required under Section 3.15.2, the Developer will be required to submit the following documentation to the Development Officer, if applicable, in order to obtain Building and Development Permits for the private wharf component of this Agreement:

- (a) Fisheries and Oceans Canada authorization under the Fisheries Act;
- (b) Transport Canada authorization under the Navigable Waters Protection Act (NWPA); and
- (c) Nova Scotia Department of Natural Resources authorization for works undertaken below the ordinary high water mark.

PART 4: AMENDMENTS

4.1 Substantive Amendments

Amendments to any matter covered under this Agreement shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

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

5.2 Subsequent Owners

This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.

5.3 Commencement of Development

In the event that construction of the project has not commenced within two years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, "commencement of development" shall mean completion of the footings for the first residential building.

5.4 Completion of Development

Upon the completion of the development or portions thereof, or within seven (7) years from the date of registry of this Agreement with the Registry of Deeds, 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 Municipal Planning Strategy and Land Use By-law for Planning Districts 1&3 (St. Margarets Bay), as may be amended from time to time.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Access

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 one day of receiving such a request.

6.2 Failure or Default

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 defence 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 remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

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

SIGNED, SEALED AND DELIVERED

) DESTINY DEVELOPMENTS INC.

)

) per: _____

)

) per: _____

)

) HALIFAX REGIONAL

) MUNICIPALITY

)

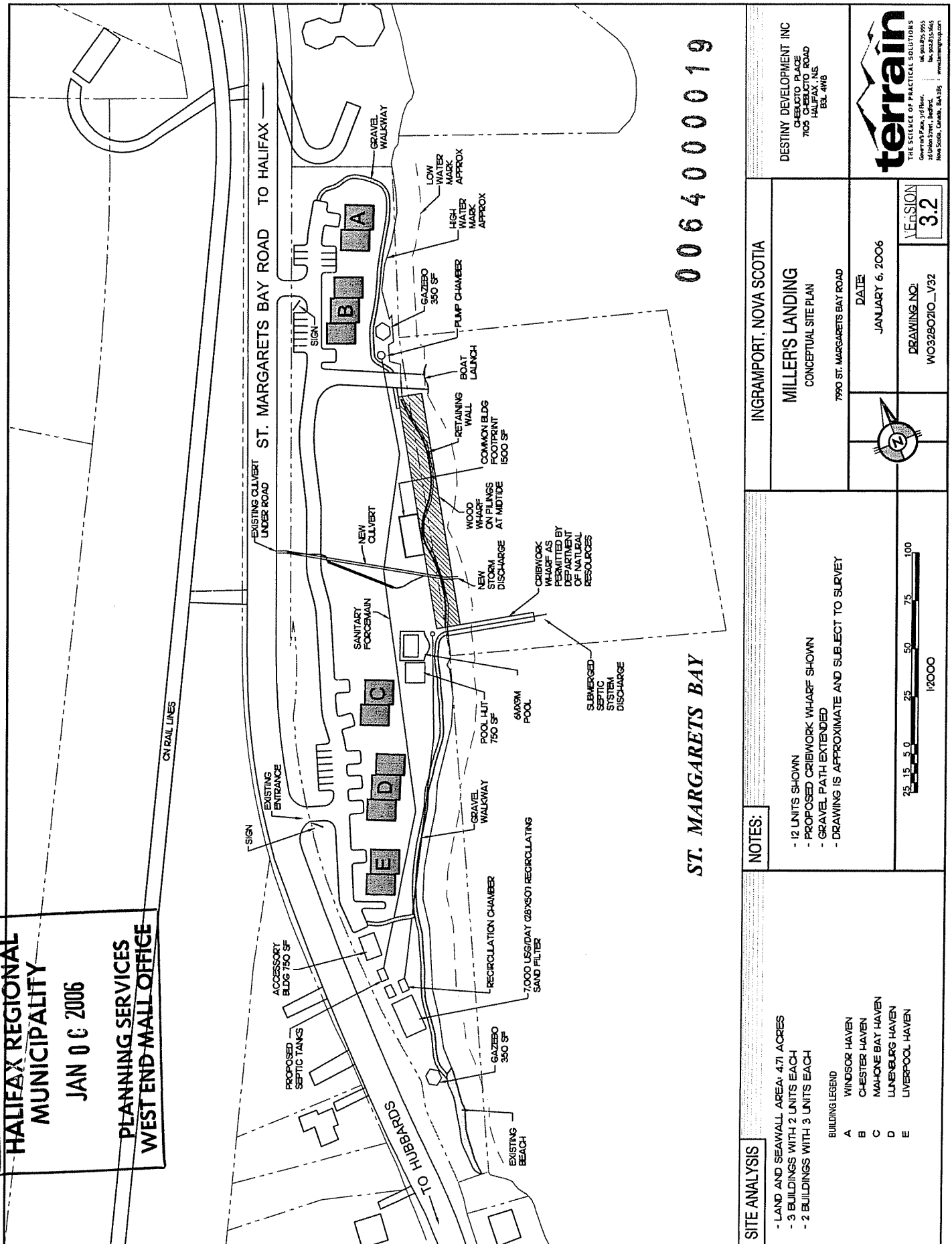
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) Mayor

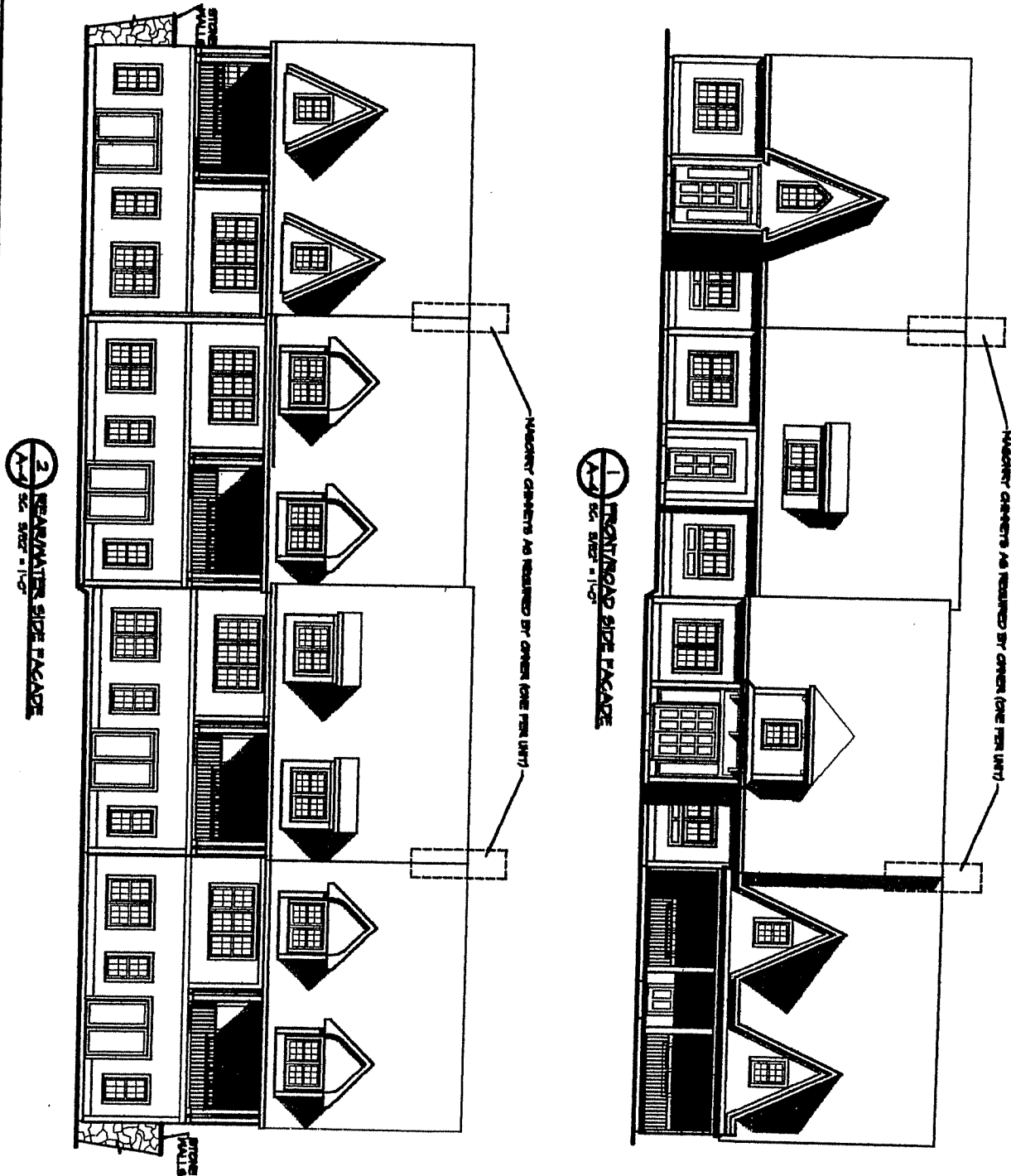
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) per: _____

) Municipal Clerk



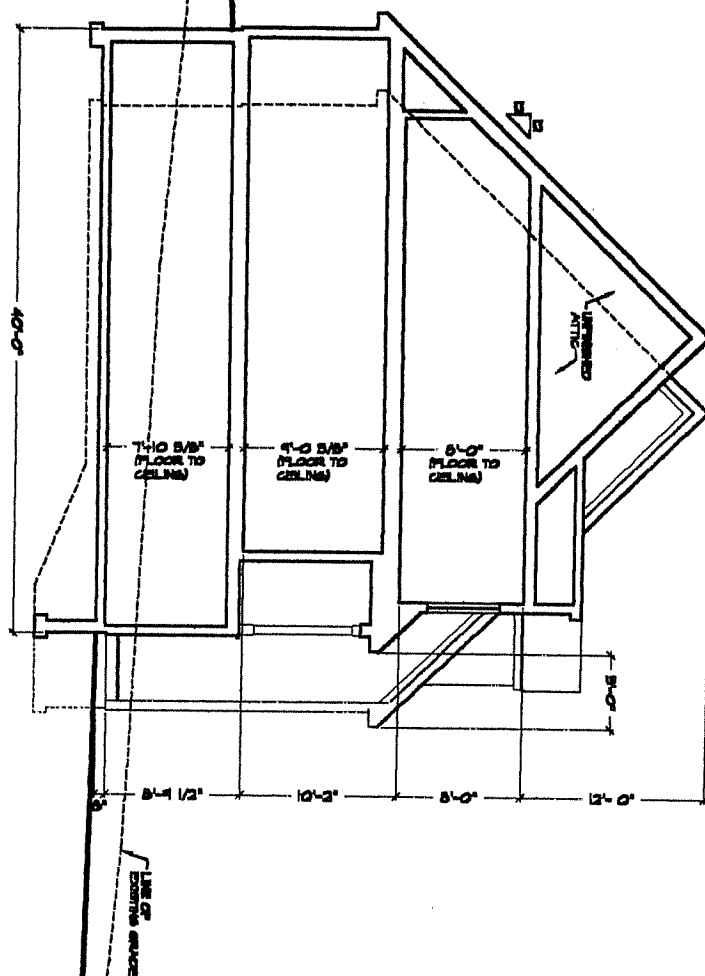
Schedule C




0064000017

Drawing No: A-4	Robert J. Finn Design Group Ltd. architects and engineers 2000 St. Margaret's Bay Rd. Ingramport, NS Tel: (902) 275-2888	Client: DESTINY DEVELOPMENTS
Project No: 0302	Sheet: FRONT AND REAR FACADE	Project: PROPOSED CONDOMINIUMS LOT 1H, 1440 ST. MARGARET'S BAY RD., INGRAMPORT, NS
	Scale: 3/32" = 1'-0"	Issued: JULY 14, 2004 Plotted: JULY 20, 2004

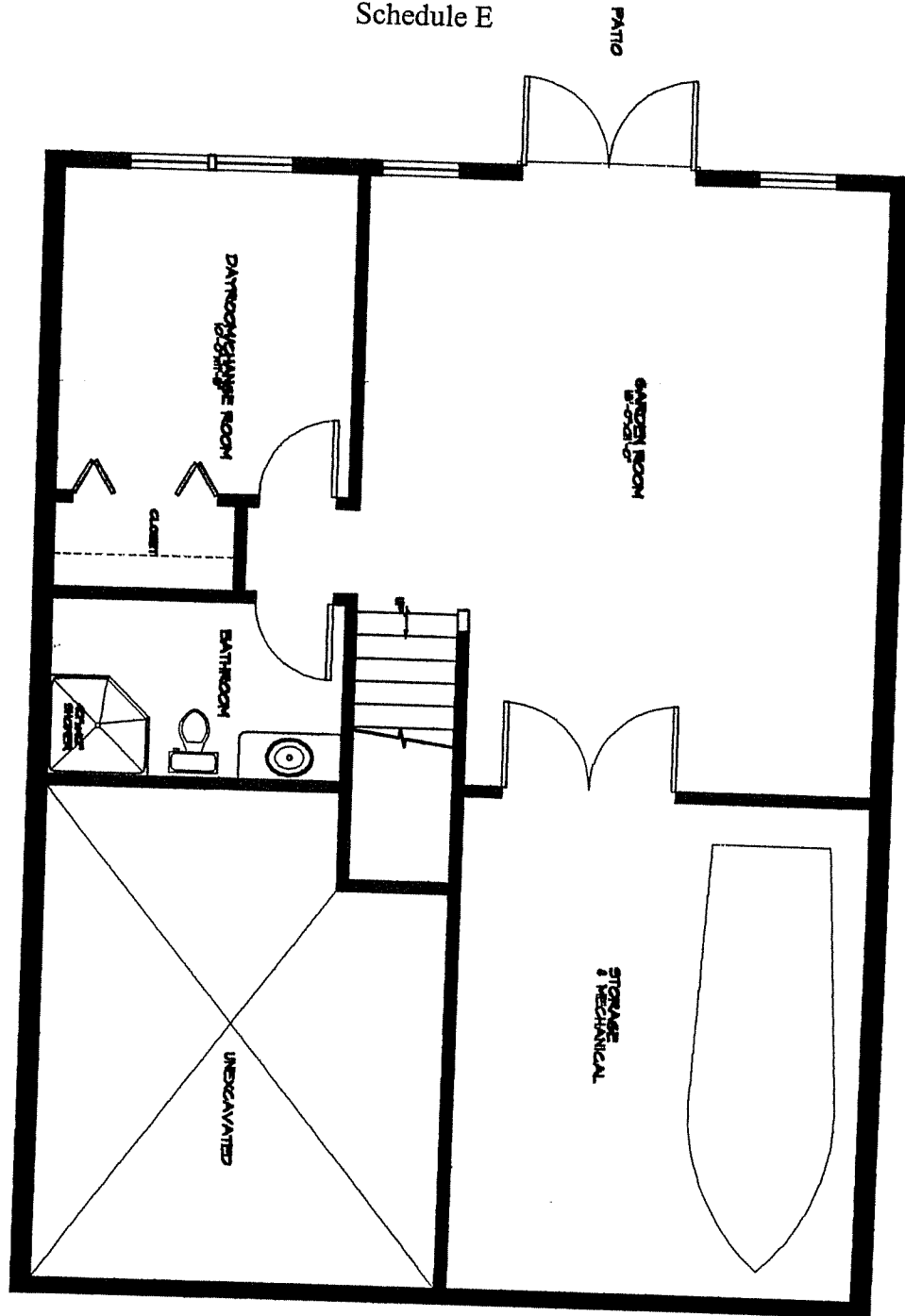
Schedule D




0064000016

Drawing No: A-5	 Robert J. Finn Design Group Ltd. architects and engineers P.O. Box 545 14100 St. Margaret's Bay Rd. Inverness, N.S. B0A 1L0 Tel: (902) 778-2888 Fax: (902) 278-2888	Client: DESTINY DEVELOPMENTS
Project No: 0302	Sheet: TYP. SECTION	Project: PROPOSED CONDOMINIUMS LOT 14, 1410 ST. MARGARET'S BAY RD., INGRAMFORD, NS
	Scale: 1/8"=1'-0"	Issued: Plotted: JUNE 18, 2004

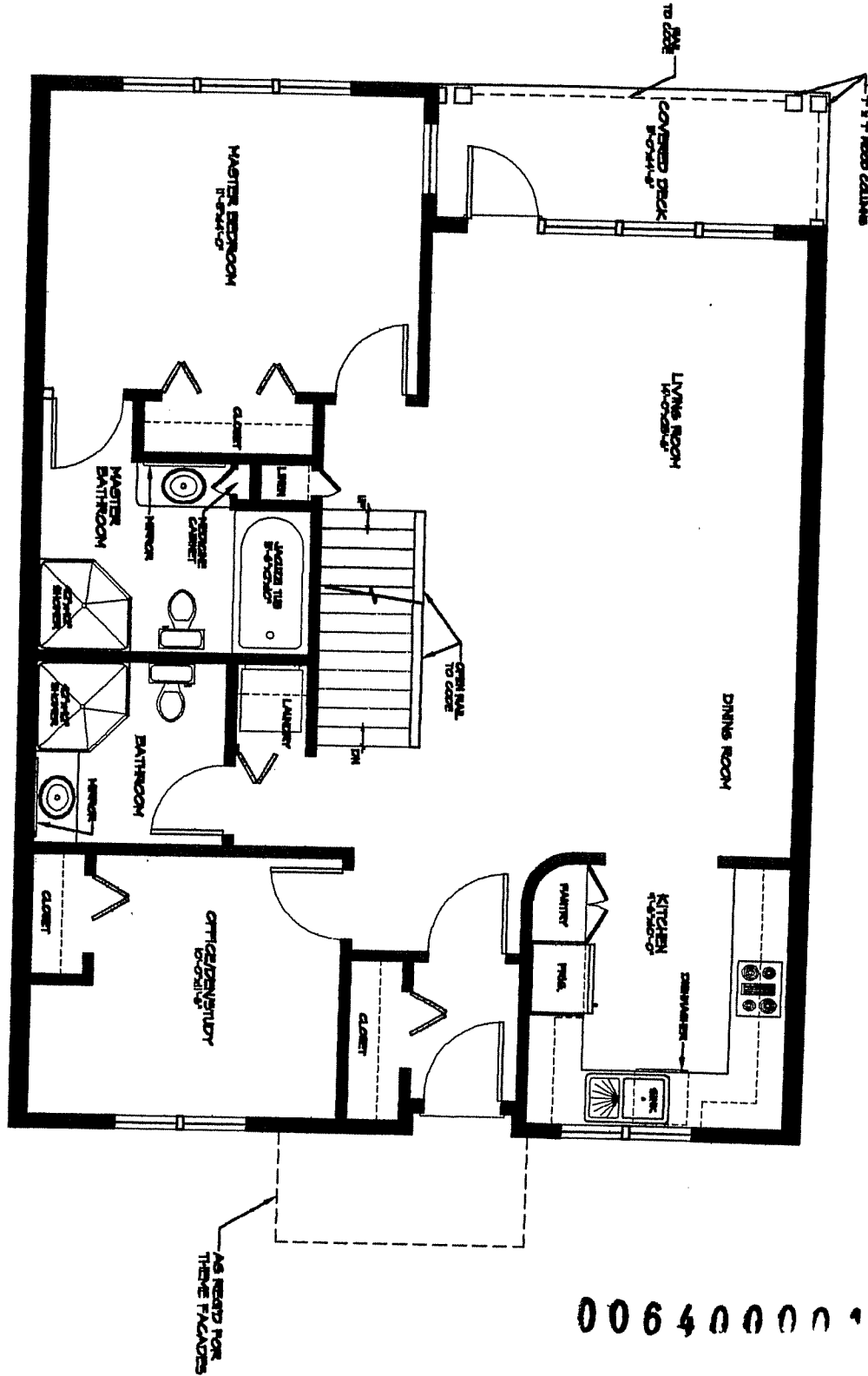
Schedule E




0064000012

Drawing No. A-1	 Robert J. Flinn Design Group Ltd. architects and engineers P.O. Box 888 1000 10th St. N. Fort St. John, B.C. V8T 2S6 Tel: (250) 775 2888	Client: DESTINY DEVELOPMENTS	
Project No. 0302	Sheet: BASEMENT FLOOR PLAN - CONCEPT A		Project: PROPOSED CONDOMINIUMS LOT 1H, 7440 ST. MARGARET'S BAY RD., INGRAMPORT, NS Scale: 1/4"=1'-0" Issued: Plotted: JUN 14, 2004

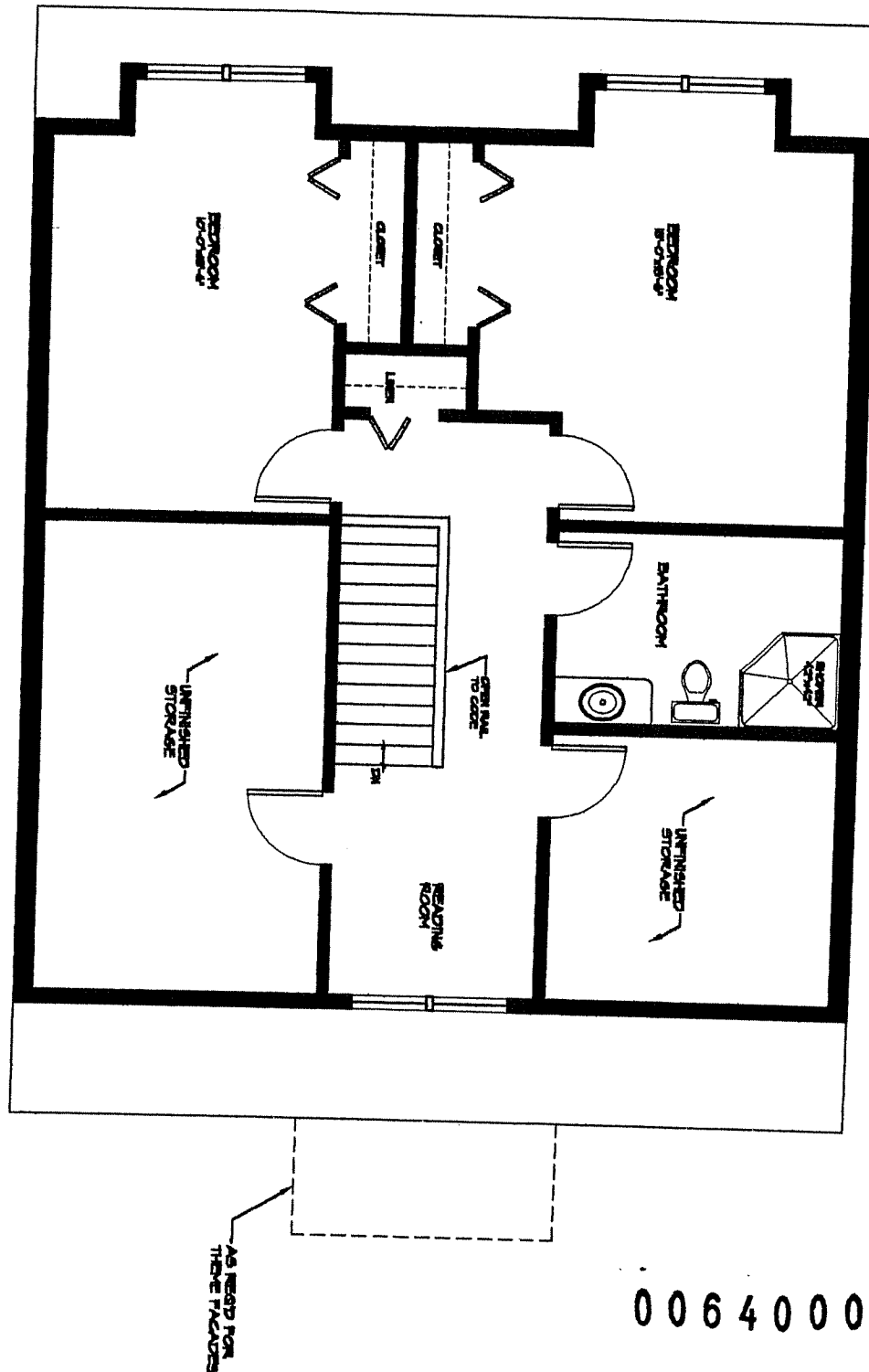
Schedule F



0064000013

Drawing No: <div style="font-size: 2em; font-weight: bold; text-align: center;">A-2</div>	 Robert J. Flinn Design Group Ltd. architects and engineers P.O. Box 545 11000 9th Ave. S.W. Seattle, WA 98148 Tel: (206) 375-2888	Client: DESTINY DEVELOPMENTS
Project No: <div style="font-size: 1.5em; font-weight: bold;">0302</div>	Sheet: GROUND FLOOR PLAN - CONCEPT A	Project: PROPOSED CONDOMINIUMS LOT 14, 1440 ST. MARGARET'S BAY RD., INGRAMPTON, NS
		Scale: 1/4" = 1'-0"
		Issued: Plotted: JUN 14, 2004

Schedule G



Drawing No: A-3	Robert J. Flinn Design Group Ltd. architects and engineers P.O. Box 550 St. John's, NL A1B 2X6 Tel: (709) 276-2888	Client: DESTINY DEVELOPMENTS
Project No: 0302	Sheet: SECOND FLOOR PLAN - CONCEPT A	Project: PROPOSED CONDOMINIUMS LOT 1H, 7440 ST. MARGARET'S BAY RD., INSRAMFORT, NS
	Scale: 1/4" = 1'-0"	Issued: Plotted: JUNE 14, 2004