



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

## Item No. 11.1.4

Halifax Regional Council  
March 4, 2008

**TO:** Mayor Kelly and Members of Halifax Regional Council

A handwritten signature in dark ink, appearing to read "Dan English".

**SUBMITTED BY:**

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Dan English, Chief Administrative Officer

A handwritten signature in dark ink, appearing to read "G. Kaiser".

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Geri Kaiser, Deputy Chief Administrative Officer - Corporate Services  
and Strategy

**DATE:** February 27, 2008

**SUBJECT:** **Modification to Restrictive Covenants on Dalhousie University Owned  
Property on University Avenue**

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### **ORIGIN**

This report arises from a request from Dalhousie University to amend the restrictive covenants attached to its property bounded by Summer Street, College Street, University Avenue, and a line formed by the extension of Carleton Street to University Avenue (the subject parcel).

### **RECOMMENDATION**

It is recommended that:

1. Regional Council authorize the Mayor and Clerk to execute an Agreement to amend the restrictive covenant on the subject parcel conveyed to Dalhousie University by deed dated April 2, 1912 and recorded on June 19, 1912 in Book 420 at Page 586 to replace "for the purposes of education" to "for university and related research and development uses, which related research and development uses shall be consistent with the then current standards and practices of the university sector, and all ancillary uses thereto".

## **BACKGROUND**

The subject parcel is “between Carleton, Morris, College and Summer streets”, commonly referred to as the old Grace Maternity Hospital site (see Attachment A). It is on this site that Dalhousie intends to construct a Life Science Research Institute (“LSRI”). Dalhousie University applied for, and received, a variance on part of the subject parcel for this project in December, 2005 (see Attachments B and C).

Dalhousie University has requested that the Municipality modify the restrictive covenant on the subject parcel to “university and related research and development uses, which related research and development uses shall be consistent with the then current standards and practices of the university sector, and all ancillary uses thereto” from the current “for the purposes of education” (see Attachment D).

The modification of the restrictive covenant on the Grace Maternity Hospital parcel from educational to the broader university purpose will give Dalhousie University more flexibility in creating research and research-related incubation space at the university. This will also enhance the LSRI concept. The federal government has confirmed \$15 million in funding for the LSRI and plans are underway to begin construction of the in excess of \$42 million building this spring.

The LSRI is envisioned to be a centre for research as well as a centre for innovation through incubation of research that has economic potential. The LSRI’s lead tenant will be the renowned Dalhousie University Brain Repair Centre (BRC), dedicated to finding treatments for conditions such as Parkinson disease, Alzheimer disease, and spinal cord injury.

The LSRI will be the focal point for world leading research and will create social benefits through enhanced clinical and educational and training experiences, and benefits through its emphasis on and facilitation of knowledge translation and pre-commercial and commercial opportunities flowing from life science and medical research.

## **DISCUSSION**

Because the subject parcel forms part of the original Halifax Common, the conveyance to Dalhousie University by the City of Halifax was authorized by legislation. The legislation authorizing the 1912 conveyance of the Grace Maternity Hospital parcel (S.N.S. 1901, c. 84, s. 11) permitted City Council to convey the property “in such a manner as the council sees fit”. As such, Regional Council may modify the current restrictive covenant that the property be used for “the purposes of education”, without requiring additional legislative approval.

## **BUDGET IMPLICATIONS**

There are no budget implications at this time.

## **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 deny the request to modify the restrictive covenants on the subject parcel. This would have an impact on Dalhousie University's ability to begin construction of the LRSI.

## **ATTACHMENTS**

- A. Legal description of subject property
- B. Report to Peninsula Community Council re: variance
- C. Minutes of Peninsula Community Council, December 12, 2005
- D. Copy of draft Agreement

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.

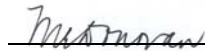
Report Prepared by: Sara Knight, Solicitor, 490-3295

Financial Approval by:



Catherine Sanderson, Senior Manager, Financial Services, 490-1562

Report Approved by:



M.E. Donovan, Direct, Legal Services & Risk Management, 490-4219

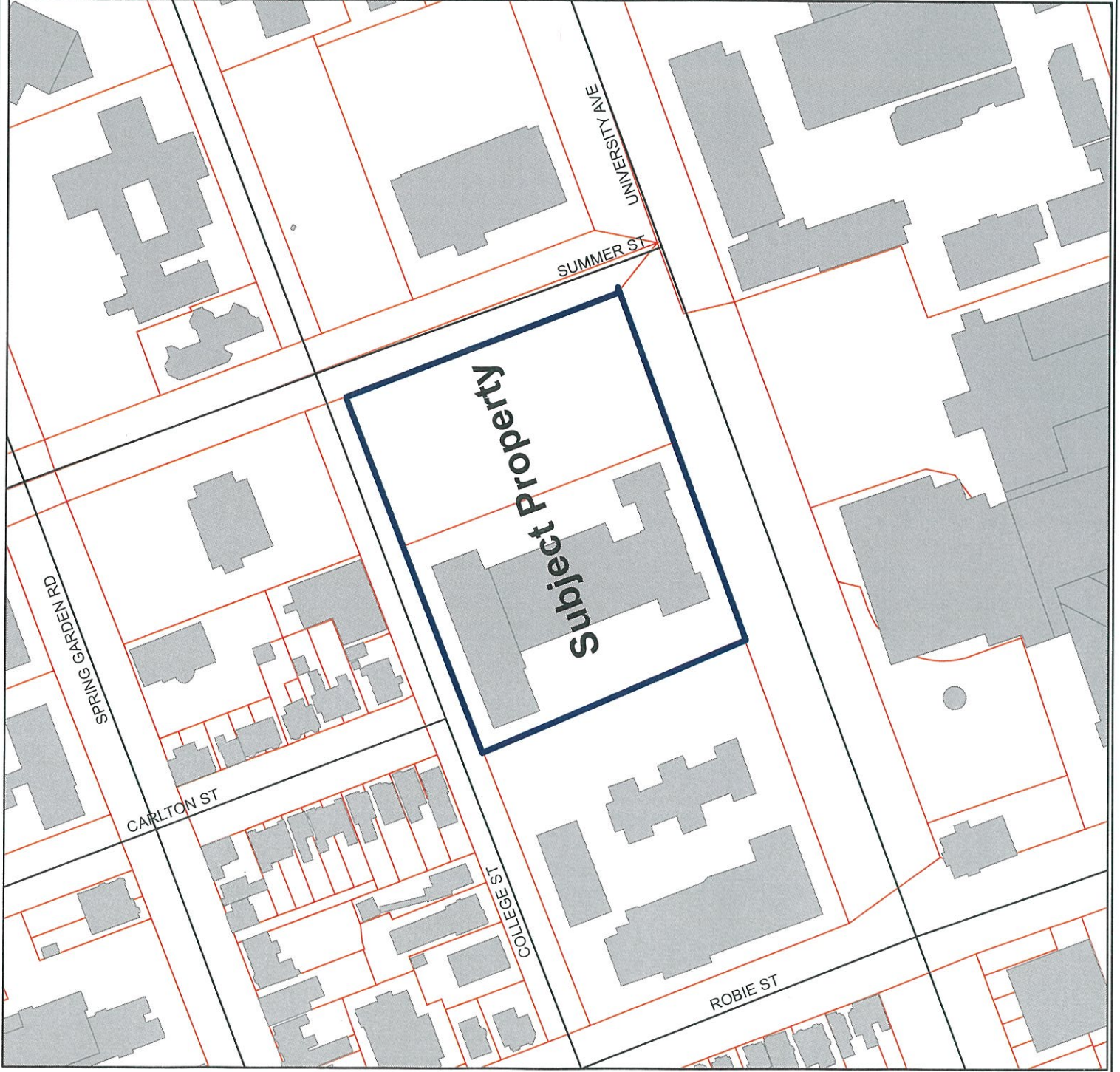
## **Attachment A**

Legal description of subject property from deed dated April 2, 1912 and recorded on June 19, 1912, Book 420 page 586:

... the Vendor doth hereby grant bargain sell alien transfer and convey unto the Purchaser its successors and assigns, all that lot piece or parcel of land situate lying and being between Carleton, Morris, College and Summer Streets in the City and County of Halifax, the said lot being more particularly described as follows - Beginning at a point on the south side line of College Street at the intersection of the said south side line with the west line of Summer Street, thence south along the said west line of Summer Street for a distance of there hundred and seventy three feet more or less or until it meets the north line of Morris Street as shown on section seventeen of the official City Plan thence westerly along said north line of Morris Street for a distance of four hundred and eighty feet more or less or until it meets the west line of Carleton Street, thence, northerly by the said west line of Carleton Street for a distance of three hundred and sixty seven feet more or less or until it meets the south line of College Street, thence easterly by the said south line of College Street for a distance of four hundred and eighty feet more or less to the place of beginning the above described lot including Carleton Street from College Street to Morris Street, Reserving however to let the City a right of way for a public street across the land hereby conveyed, such street to be in substitution for Carleton Street, to be not less than sixty feet in width and to begin on the northern boundary of the said land at the point where Carleton Street now enters on the said land and to continue across the said land to Morris Street in a course not unreasonably deflected from that now followed by Carleton Street such course to be subject to the approval of the City Engineer of the City of Halifax, together with all and singular the easements, tenements, hereditaments rights privileges and appurtenances to the same same [sic] belonging or in anywise appertaining.

# ATTACHMENT "A"

## SITE MAP



This map was produced for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. Date of map is not indicative of the date of data creation.

Date: February 28, 2008  
Prepared by: E. Wall

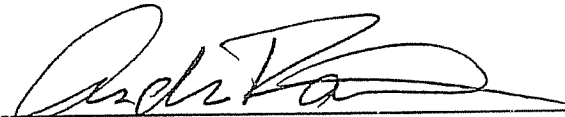


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Peninsula Community Council  
December 12, 2005

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

  
Andrew Faulkner - Development Officer

DATE: December 7, 2005

SUBJECT: Appeal of the Development Officer's decision to approve an application for  
a Variance - 5850 University Avenue, Halifax

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#### ORIGIN

Pursuant to Section 236(3) of the Municipal Government Act any person served notice of a variance may appeal the decision of the Development Officer to the Municipal Council.

This is an appeal of the Development Officer's decision to approve a variance for *5850 University Avenue, Halifax*.

#### RECOMMENDATION

It is recommended that Council uphold the decision of the Development Officer to approve the variance.

### **BACKGROUND**

The subject property is vacant and was once the site of the Grace Maternity Hospital. The property is presently used as a parking lot. Dalhousie University has a long term lease on the subject property and owns the land containing the Sir Charles Tupper Building immediately abutting this property. The intent is to connect the new Life Sciences Research Institute (LSRI) building with the Tupper Building at the fourth floor level.

The proposed LSRI building is on property zoned P, *Park and Institutional*, in the Peninsula Land Use Bylaw. The use is permitted within the zone subject to the angle control provisions of the R-3, *Multiple Dwelling* Zone. The Tupper Building is on land zoned U-2, *High-Density University*.

On August 8, 2005, the Development Officer approved a Variance of the angle control requirements and the setback provisions to permit construction of the LSRI building wall at zero lot line setback. The variance also relaxes the setback of the connecting walkway to zero feet. We received an Appeal of the Development Officer's approval of the Variance from the owner of 5845 College Street, which is situated immediately across the street from the proposed LSRI building.

This variance appeal hearing has been delayed since September as the appellant and applicant have been in discussion over design.

### **DISCUSSION**

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

*"A variance may not be granted where the:*

- (a) variance violates the intent of the land use bylaw;*
- (b) difficulty experienced is general to the properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

#### **Does the proposed variance violate the intent of the land use bylaw ?**

Angle controls were introduced in the Halifax Peninsula Land Use Bylaw in the late 1960's as a means to address siting and scale issues with multi-unit residential dwellings. At the same time, provisions regulating lot area, population density and open space were adopted. The objectives were to regulate the intensity and form of residential development to strike an acceptable middle point between the desires of developers for maximum use and the desires of residents for good environments.



The LSRI building property is in the P, *Park and Institutional* Zone which does not permit residential uses, however, it does require that all buildings constructed for P uses comply with the angle control provisions the R-3 *Multiple Dwelling* Zone. As there is no residential component to the proposed LSRI building the R-3 provisions respecting density and open space are not applicable.

The building complies with the angle controls on all sides and the street line, but the internal lot line abutting the Tupper Building property, property under ownership of the University. The research use and staff of the LSRI building is closely aligned with the research use and staff in the Tupper Building and a connection between the two structures is practical for access and sharing of building services.

Further; turning and relocating the building to the centre of the lot will result in the loss of the majority of the existing parking spaces. Maintaining as much parking as possible in that area is important.

The Development Officer determined that the intent of the bylaw is not violated by granting the variance to zero lot line setback between the Tupper Building property and the LSRI property.

**Is the difficulty experienced general to the properties in the area ?**

The property is unique in that it is the largest parcel of vacant land with the appropriate zoning in the vicinity of the university. It is the only vacant land in proximity of the Tupper Building.

The Development Officer determined that the difficulty experienced is not general to properties in the area.

**Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?**

No work has been initiated and there has been no intentional disregard for the requirements of the bylaw.



**BUDGET IMPLICATIONS**

There are no implications on the Capital Budget associated with this report.

**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.

**REGIONAL PLANNING IMPLICATIONS**

There are no implications on the Regional Planning process associated with this application.

**ALTERNATIVES**

1. Council could uphold the decision of the Development Officer to approve the variance. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer.

**ATTACHMENTS**

1. Location Map
2. Site Plan
3. Building Elevations
4. Appeal letter dated August 22, 2005, from Mr. Austin Park, President, College-Gardens Ltd.

**INFORMATION BLOCK**

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: Andrew Faulkner - Development Officer (490-4402)



This map was prepared for the internal use of  
Halifax Region Municipality (HRM). HRM  
takes no responsibility for errors or omissions.  
For further information on Street Name or  
Community (GSA) data please contact HRM  
Civic Addressing at 490-5347 or email

AREA OF  
PROPOSED  
VARIANCE

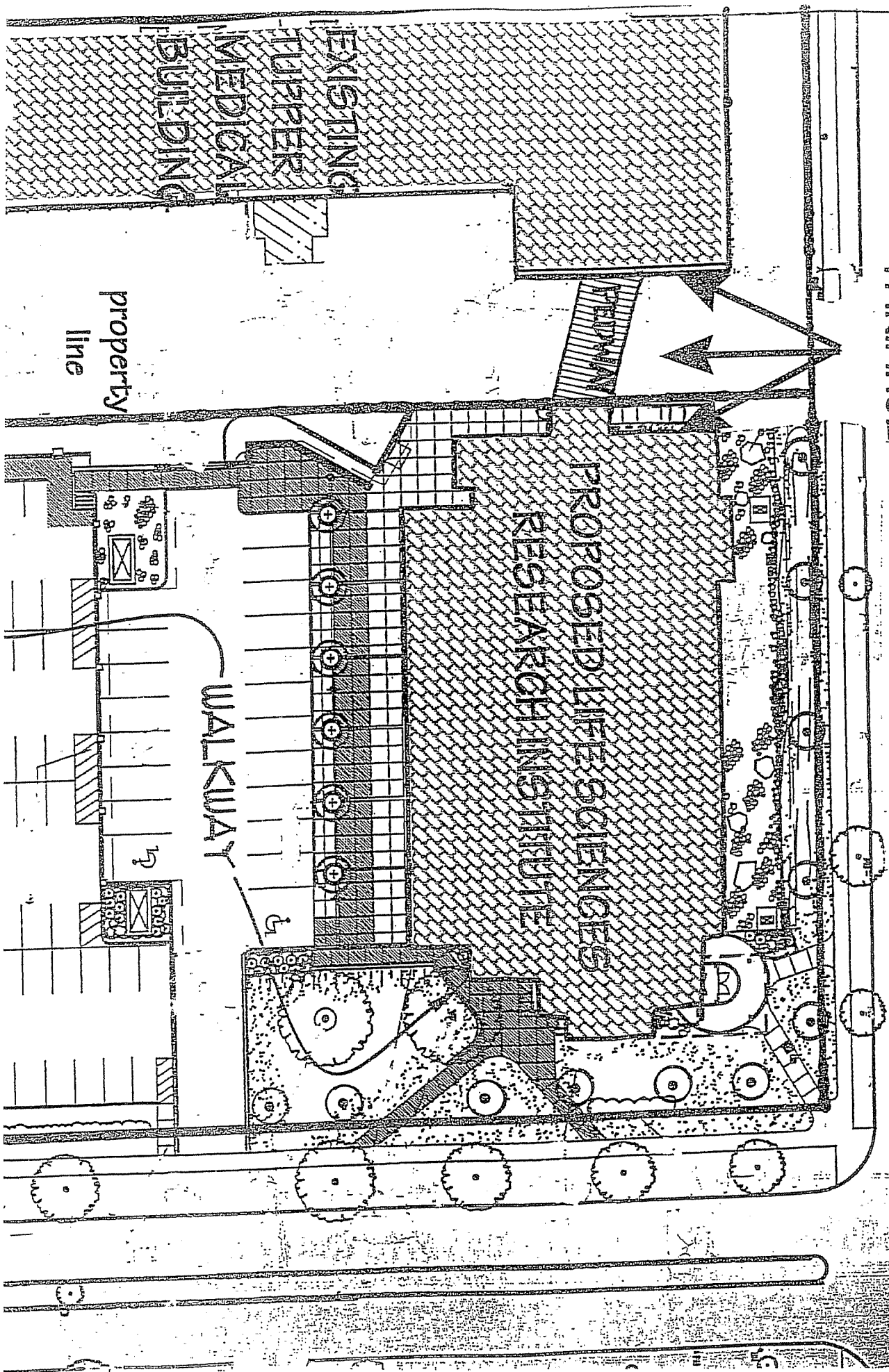
COLLEGE STREET

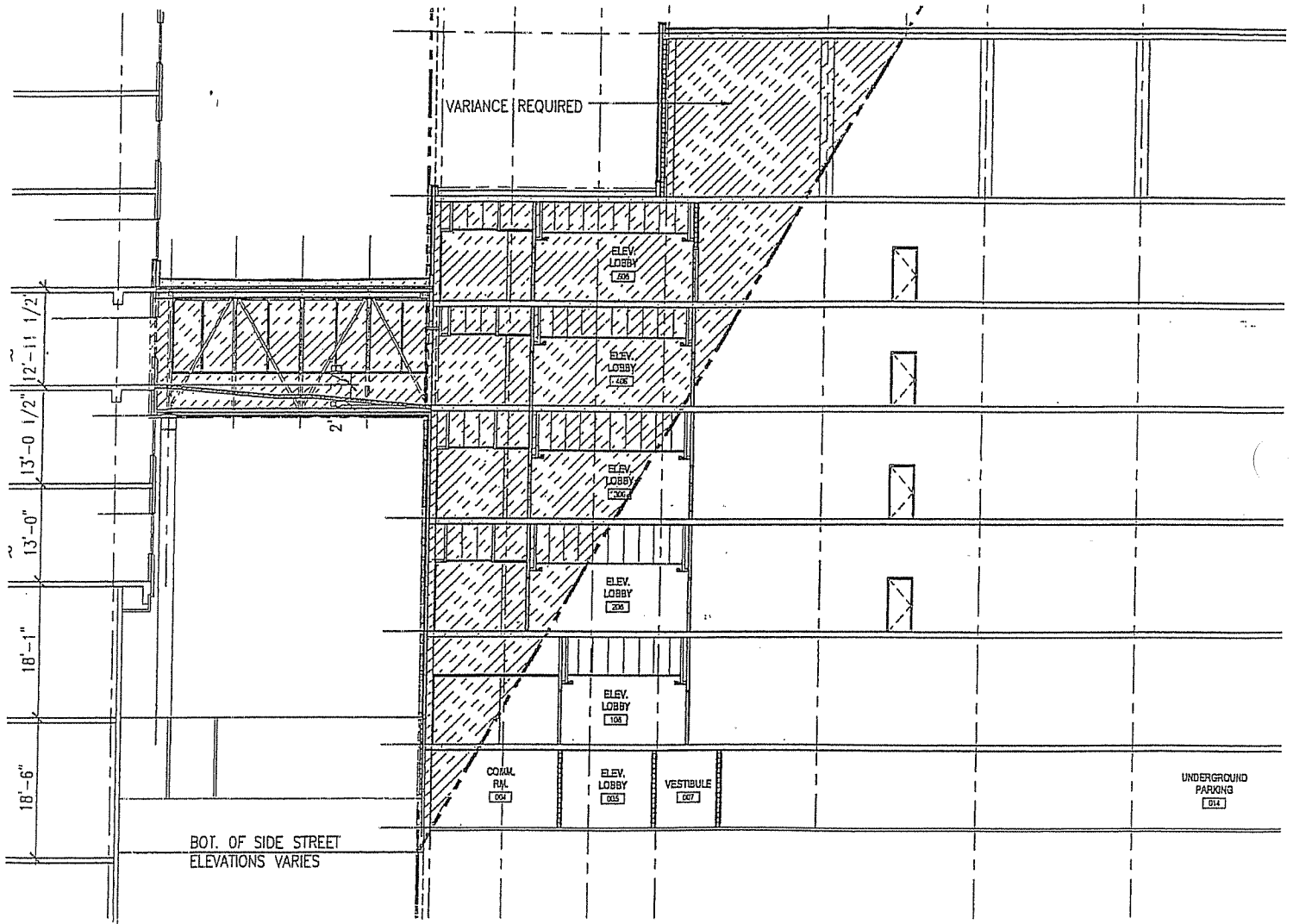
PROPOSED LIFE SCIENCES  
RESEARCH INSTITUTE

EXISTING  
UPPER  
MEDICAL  
BUILDING

property  
line

WALKWAY





Austin Park, President  
College-Gardens Limited  
c/o 6507 Chester Ave.  
Halifax, NS  
B3L 2P5  
497-7788

Municipal Clerk  
c/o Andrew Faulkner, Development Officer  
Halifax Regional Municipality  
Planning and Development – Western Region  
P.O. Box 1749  
Halifax, NS  
B3J 3A5

August 22, 2005

Dear Sir:

Re: Case Number 12090 –Variance at 5850 University Ave., Halifax, NS

I am President of College Gardens Limited, the owner of 5845 College Street, Halifax, NS, a multi-unit residence.


Please accept this letter as notice that we would like to appeal the proposed variance pertaining to the property located at 5850 University Avenue, Halifax, NS.

We have a number of concerns relating to the proposed variance and would be pleased to discuss same with you at your convenience.

Please notify us of any further proceedings with regard to this matter at the address and telephone number noted above.

Yours truly,

College-Gardens Limited



Per: Austin Park, President

RECEIVED AUG 23 2005



**8.2.1 Appeal of the Decision of the Development to Approve a Variance of the Right Sideyard Setback - 5850 University Avenue, Dalhousie Life Science Research Institute**

- A staff report dated December 7, 2005 was before Council.

Andrew Faulkner, Development Officer, briefly reviewed the basis for the Development Officer's decision to approve a variance for 5850 University Avenue to permit construction of the Life Science Research Institute as contained in the December 7, 2005 staff report.

Mr. Faulkner noted that the hearing has been delayed since September as the appellant and applicant have been in discussion over design. He went on to indicate that staff is recommending Community Council uphold the decision of the Development Officer to approve the variance.

In response to a question from Councillor Sloane, Mr. Faulkner indicated that as is the practice, the common property owner and in this case Condominium Corporation 130 was notified.

Councillor Sloane indicated that residents of Summer Gardens own their properties individually and pay taxes. She noted that she has been receiving calls from residents of that condominium concerned with regard to the notice given for this variance.

Providing further clarity, Ms. Mary Ellen Donovan, the Municipal Solicitor, noted that the practice of the Municipality has been to notify the condominium corporation owner as being the proper party, the owner of all the common interests, pursuant to the provisions of the Municipal Government Act.

The Chair called for persons wishing to speak in favour of or against the appeal.

**Austin Park, the appellant**

Mr. Park addressed Community Council expressing serious concerns regarding the project. He suggested that there were a number of area residents who were not aware of the application and questioned whether HRM's practice had legal standing. Mr. Park went on to indicate that this variance substantially eliminates the sunlight from his building at 5845 College Street. The building is a five storey building, however, it is 94 feet high. Mr. Park indicated that his building has experienced wind damage in the past as a result of its proximity to the Tupper Building. Mr. Park noted that the wind damage to his building will only increase with this new building.

Mr. Park pointed out that Dalhousie has indicated that it would be inconvenient to push

their new building back on the lot, as it would eliminate some of their parking. Mr. Park indicated that he would pay the price for the variance.

**Brian Malloy, co-owner of the building at 5845 College Street**

Mr. Malloy noted that angle controls were in place when 5845 College Street was built and suggested that if these controls had not been in place, the building would likely have blocked the light from the buildings on Carleton Street. He suggested that the proposed pedway would remove the blue sky from a number of the units at 5845 College Street and suggested it be built underground. Mr. Malloy noted that the wind is very severe in this area and damage to his building is such that the roof has had to be replaced ten (10) years before anticipated. He went on to indicate if the LSRI building is moved back, the wind impact will be reduced. Mr. Malloy noted that he planned to convert his building to condominiums within ten years and the location of the LSRI building will result in a loss of value. Mr. Malloy indicated that the building should be required to meet the angle controls.

**Colin Latham, Chairman of Life Science Research Building**

Mr. Latham addressed Community Council with regard to the variance application and the overall project noting the following:

- There has been no significant research space since the Sir Charles Tupper Building in 1967
- This proposal add 75,000 square feet of high quality research space for life sciences
- There is a significant amount of research in the life sciences carried out in HRM (in excess of \$100 million)
- The advantage of this particular space will be that it will allow HRM to attract world class educators and researchers
- These individuals will be educators for the next generation of medical practitioners and also are leading edge clinicians
- Residents of Halifax will have access to the highest quality health services in the region and in Canada
- The project employed a community representative and held a community meeting
- 30-40 people from the community attended including a number from the Summer Gardens condominiums
- The community input was responded to and resulted in modifications to the building designs

Concluding his remarks, Mr. Latham indicated that he believed the stakeholders have been responsible in both providing a high quality health care facility for the benefit of all



residents of HRM and involving area residents and responding to their needs.

**Steven Basset, Project Manager, LSRI**

Mr. Basset addressed Community Council and reviewed the technical aspects of the building. Using drawings, he went on to note that in 1993 the Grace Maternity Hospital was adjacent to the Tupper Building and located very close to the lot line. Mr. Basset indicated that the building is five stories in height with a penthouse, 75 underground parking spaces and 24 above ground, the building size is 185 feet long running down College Street and approximately 80 feet deep. The floor area is approximately 100,000 square feet.

Mr. Basset indicated that the variance application dealt with angle control and setback . He indicated that there were a number of reasons that it is important that the new building stay in close proximity with the Tupper Building including:

- it is integral part of the medical services community and requires a strong link to the Tupper Building
- building services will be fed from the Tupper Building to the LSRI
- common loading facilities will be shared between the two buildings
- improve pedestrian linkages from University Avenue to College Street
- affords an opportunity to enhance green space on the east side of the building

Mr. Basset, using a drawing, illustrated the enhancement of green space from a south east view of the Tupper Building and the LSRI. He noted that the pedway will be safe and well lit.

Mr. Basset went on to advise that a ground level snow drift study has been undertaken. The results of the pedestrian wind study have indicated that wind comfort and safety results are appropriate for walking both winter and summer. Mr. Basset noted that an exhaust dispersion study had resulted in enhancements to the design of the building. Mr. Basset then turned to the findings of the shadow study noting that they indicate there is no significant impact on the appellant's building.

**Geoff Lamb, Director of Facilities Management, Dalhousie**

Mr. Lamb briefly provided further detail with regard to the findings of the shadow study reiterating that there is no impact on the 5845 College Street building. Mr. Lamb noted that there is some shadow effect, but no greater than when the Grace Maternity Hospital was on the site. He noted that the appellant's building was more impacted by shadow's created by the Tupper Building.

The Chair called three times for persons wishing to speak in favour or against the appeal.

Hearing none, it was **MOVED by Councillor Sloane, seconded by Councillor Murphy that the appeal hearing close. MOTION PUT AND PASSED UNANIMOUSLY.**

Councillor Sloane expressed concern that as the Councillor for the for the area she had not been not aware of this application until last week. She noted that she was pleased that a wind and shadow/sun study had been done.

**MOVED by Councillor Sloane, seconded by Councillor Murphy that Peninsula Community Council uphold the decision of the Development Officer and allow the appeal.**

Councillor Sloane again expressed concern regarding the notification and **MOVED, seconded by Councillor Uteck that the motion be amended to provide that approval be subject to the Solicitor confirming that there is no requirement for notification of individual condominium owners.**

The **MOTION TO AMEND WAS PUT AND PASSED.**

The question was then called on the amended motion as follows:

**That Peninsula Community Council uphold the Development Officer's decision to approve the variance and to deny the appeal subject to the Municipal Solicitor confirming that there is no requirement for notification of individual condominium owners.**

The **MAIN MOTION WAS PUT AND PASSED UNANIMOUSLY.**

## Attachment D

**THIS AGREEMENT** made this            day of            , 2008.

**BETWEEN:**

**HALIFAX REGIONAL MUNICIPALITY**, a body corporate, hereinafter referred to as "HRM"

- and -

**DALHOUSIE UNIVERSITY**, a body corporate, hereinafter referred to as "Dalhousie"

**WHEREAS** by virtue of a Deed dated April 2, 1912, and recorded on June 19, 1912, in Book 420 at Page 586 (the "Deed"), the City of Halifax conveyed certain lands to the Governors of Dalhousie College, which lands are bounded by what was known as Carleton, Morris, College and Summer Streets, and which lands are more particularly described in Schedule "A" attached hereto (the "Lands");

**AND WHEREAS** HRM is the successor to the City of Halifax and Dalhousie is the successor to the Governors of Dalhousie College;

**AND WHEREAS** by virtue of the above-described Deed, HRM retained a reversionary interest in the Lands which interests would take effect if the Lands were used for any purposes other than educational uses as described in the above Deed;

**AND WHEREAS** HRM has agreed to amend the conditions with respect to use related to its reversionary interest in the Lands;

**NOW THIS AGREEMENT WITNESSETH** that in consideration of the sum of One Dollar (\$1.00) paid by Dalhousie to HRM and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. HRM hereby releases to Dalhousie, its heirs, executors, administrators and assigns, the benefits of the use restrictions more particularly described in the Deed referred to above with the intent that any such use restrictions are forever discharged.
2. In substitution for the use restrictions released in paragraph 1 above, Dalhousie covenants and agrees with HRM that the Lands shall be used for university and related research and development uses, which related research and development uses shall be consistent with the then current standards and practices of the university sector, and all uses ancillary thereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED and DELIVERED

in the presence of:

$$\begin{matrix} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{matrix}$$

**HALIFAX REGIONAL MUNICIPALITY**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**DALHOUSIE UNIVERSITY**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

PROVINCE OF NOVA SCOTIA  
HALIFAX REGIONAL MUNICIPALITY

I CERTIFY that on this            day of            , 2008, HALIFAX REGIONAL MUNICIPALITY, one of the parties mentioned in the foregoing and annexed Indenture, signed and executed the said Indenture in my presence and I have signed as a witness to such execution.

---

A Barrister of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
HALIFAX REGIONAL MUNICIPALITY

I CERTIFY that on this                      day of                      , 2008, DALHOUSIE UNIVERSITY, one of the parties mentioned in the foregoing and annexed Indenture, signed and executed the said Indenture in my presence and I have signed as a witness to such execution.

---

A Barrister of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA )

HALIFAX REGIONAL MUNICIPALITY )

I, \_\_\_\_\_, of \_\_\_\_\_, in the Halifax Regional Municipality,  
Province of Nova Scotia, make oath and say as follows:

1. THAT I am the \_\_\_\_\_ of Halifax Regional Municipality ("HRM"), one of the parties to the within Agreement, and as such have a personal knowledge of the matters herein deposed to.
2. THAT for the purposes of this my affidavit, "Matrimonial Home" means a dwelling and real property occupied by a person and that person's spouse as their family residence and in which either or both of them have a property interest other than a leasehold interest.
3. THAT the real property described in the attached Agreement has never been occupied by any shareholder of HRM as a Matrimonial Home while it has been owned by the Company, nor does ownership of a share in HRM entitle the owner or owners thereof to occupy it as a Matrimonial Home.
4. THAT HRM is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

SWORN TO at Halifax, )  
in the County of Halifax, )  
Province of Nova Scotia, )  
this \_\_\_\_\_ day of \_\_\_\_\_, )  
2008, before me )  
)  
)  
)  
)  
)  
\_\_\_\_\_  
A Barrister of the Supreme Court )  
of Nova Scotia )



DATED: , 2008

**HALIFAX REGIONAL MUNICIPALITY**, a body corporate, hereinafter referred to as "HRM"

- and -

**DALHOUSIE UNIVERSITY**, a body corporate, hereinafter called "Dalhousie"

---

**AGREEMENT**

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RETURN TO:

GEORGE MONROE  
MCINNES COOPER  
PO Box 730  
1300-1969 Upper Water Street  
Purdy's Wharf Tower II  
HALIFAX NS B3J 2V1  
(File GE-117)

