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Item No. 9.1

Halifax Regional Council
June 17, 2008
June 24, 2008

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Wayne Anstey, Acting Chief Administrative Officer

DATE: May 28, 2008

SUBJECT: **Case 00971 - MPS/ LUB Amendment and Development Agreement,
Halkirk (Keiths Brewery) lands**

SUPPLEMENTARY REPORT

ORIGIN

- Request by Halkirk Properties Limited to amend the Halifax MPS and Halifax Peninsula LUB to permit a mixed-use development on the southern portion of the "Keith's Brewery" lands by development agreement.
- April 2, 2008 Staff Report to Heritage Advisory Committee and District 12 Planning Advisory Committee.
- April 21, 2008 report of the District 12 PAC to Regional Council.
- May 9, 2008 report of the HAC to Regional Council.
- Submission of revised drawings by Halkirk Properties Limited.
- May 13, 2008 decision by Regional Council to schedule a Public Hearing.

RECOMMENDATION

It is recommended that Regional Council:

1. Adopt the amendments to the Halifax Municipal Planning Strategy and Peninsula Land Use By-law as contained in Attachment A of this report, which includes the additional MPS Policy 2.4.5;

RECOMMENDATIONS CONTINUE ON NEXT PAGE

Contingent upon the amendments to the Halifax Municipal Planning Strategy and the Halifax Peninsula Land Use By-law becoming effective pursuant to the requirements of the *Municipal Government Act*, it is further recommended that Regional Council:

1. Approve the proposed development agreement as contained in Attachment B of this report, which includes the revised Schedules I, J, K, L, M, O, P and Q;
2. 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; and
3. Discharge an existing development agreement which applies to portions of the site identified as PID #s 00471078, 00471060 and 00003723, to take effect upon the registration of the new agreement.

BACKGROUND

At the May 13, 2008 meeting of Regional Council, the following motion was passed:

Moved by Councillor Sloane, seconded by Councillor Wile, that Regional Council:

1. *Give First Reading to the Proposed amendments to the Halifax Municipal Planning Strategy and Peninsula Land Use By-law as contained in Attachment A of the April 2, 2008 and schedule a public hearing.*
2. *Move Notice of Motion to consider the proposed Development Agreement as contained in Attachment B of the April 2, 2008 report to allow for a mixed-use development and schedule a public hearing. The public hearing for the development agreement shall be held concurrently with that indicated in Recommendation 1.*
3. *To amend Attachment "B" of the report by replacing Schedules I, J, K, L, M, O, P and Q with new versions dated May 12, 2008 showing revisions resulting from changes to the western facade of the Alexander tower facing Hollis Street.*
4. *To adopt the District 12 PAC motion that the proposed Phase 3 design details be equal to this proposal in terms of materials, scaling, massing, architectural details, and height to be complementary to the existing streetscape such as Keith Hall, the Benjamin Wier House, and Halkirk House.*

Following the District 12 Planning Advisory Committee and Heritage Advisory Committee meetings in late April, the developer submitted revised drawings in response to concerns raised by both committees regarding the flat/sheer western face of the Alexander tower. This report both includes and comments on these revisions.

As the Heritage Advisory Committee (HAC) recommended against the proposal and the District 12 Planning Advisory Committee (PAC) chose not to make a recommendation but instead to provide an information report, staff feel it is appropriate to comment on some of the issues raised by the two committees. These issues are addressed below in the Discussion section.

DISCUSSION

Revisions to Proposed Alexander Building:

The revisions to the western face of the Alexander tower provide for a stepping back of the building facade and the introduction of projecting bays/balconies similar to the other three sides (elevations), which results in a greater degree of relief and articulation of the building facade. The revised drawings were circulated to Council on May 13, 2008 and are included in the revised development agreement (see Attachment B).

Staff have been advised by the developer's wind and shadow consultants that the proposed revisions will result in no appreciable changes/ impacts in relation to the wind and shadow study findings.

Staff are in favour of these revisions. The revisions are included in Attachment B to this report and affect Schedules I, J, K, L, M, O, P and Q of the proposed development agreement. These plans/schedules are to replace those in the staff report of April 2, 2008.

Phase III Design Details:

The PAC indicated a desire to incorporate architectural design requirements within the proposed MPS policy amendments regarding the future Phase III buildings fronting Hollis Street so that there is greater certainty that any future building(s) are complementary to the heritage buildings which exist in the area. Although a maximum building height of 60 feet on Hollis Street is specified in the proposed MPS amendment (policy 2.4.2), this policy did not specifically address architectural details and building materials. There are existing policies in the Halifax Waterfront Development Area (HWDA) which deal with the issue of complementary architecture (Policies 5.6, 5.6.1), but it is useful to be more specific in the proposed amendments so that any future development on Hollis Street is complementary to the existing heritage buildings and streetscape. Staff and the developer concur with this approach.

Staff have drafted an additional policy to include within the proposed amendments (see Policy 2.4.5, Attachment A to this report). As the building height (60 feet) on Hollis Street and the setback for the proposed Alexander building (65 feet from Hollis Street) are already specified, staff feel there is no further need to address the building height/ scale.

HRM by Design:

Concerns were raised by the HAC with regard to the timing of the HRM by Design exercise and whether the proposal is in keeping with its objectives. As indicated in the staff report of April 2, 2008, the HRM by Design process is anticipated to result in changes to the Halifax MPS. Likewise, the Halkirk application proposes amendments to the MPS. Both of these processes were initiated by Council, but neither has received approval to date. Therefore, a decision by Council on the Halkirk proposal cannot be based upon whether it meets HRM by Design, in its entirety or otherwise. Staff anticipate that the public hearing for HRM by Design will not occur before September.

The Nova Scotia Utility and Review Board (NSUARB) dealt with a similar issue with the United Gulf (Texpark) decision in 2007. In that case, the Board had to decide on the relevance of the draft "Barrington Street Revitalization Plan", which Council had adopted in principle, and the (then proposed) Regional Plan and whether Council should have taken these studies into account in making a decision on the development agreement proposal. The Board determined that these studies were irrelevant because they weren't duly approved policies of Council and assigned no weight to them in reaching its decision.

Appeals to the Nova Scotia Utility and Review Board (NSUARB)

The PAC expressed a concern that a comment in the staff report of April 2, 2008 was intended to advise Council on a method of circumventing appeals to the NSUARB. For clarity, the proposed MPS policy amendments do not eliminate the ability to appeal Council's decision on the development agreement. If Council were to approve the proposed MPS amendments, which provide clear and precise built form requirements such as building height and setbacks, then these particular aspects of the proposal would be much less likely to be the subject or grounds for an appeal. This is not to say, however, that an appeal could not be launched on other grounds.

Request for Second Public Meeting

Concern has been expressed that a second public information meeting should have been held prior to advancing this application forward to a public hearing. As indicated in the staff report of April 2, 2008, the standard procedure for holding public meetings has been followed and is consistent with other site-specific MPS amendments which include a development agreement.

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 and the staff support work 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. Approve the proposed amendments to the Municipal Planning Strategy and Peninsula Land Use By-law (Attachment A) and the proposed development agreement (Attachment B). This is the recommended course of action.
2. Refuse the requested amendments to the Municipal Planning Strategy and Peninsula Land Use By-law. Regional Council is under no obligation to consider a request to amend its MPS and a decision not to amend the MPS cannot be appealed.
3. Approve the proposed MPS/LUB amendments and development agreement with changes. This may require further negotiations between staff and the Developer.


ATTACHMENTS

Attachment A Proposed Amendments to the Halifax MPS and LUB
Attachment B Proposed Development Agreement with Schedules

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

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

Financial Approval by: 
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Report Approved by: 
Paul Dunphy, Director of Community Development

ATTACHMENT A

PROPOSED AMENDMENTS TO THE HALIFAX MPS AND LUB

**HALIFAX REGIONAL MUNICIPALITY
A BY-LAW TO AMEND THE HALIFAX MUNICIPAL PLANNING STRATEGY
CASE #00971**

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Municipal Planning Strategy of Halifax as enacted by City Council of the City of Halifax on the 30th day of March, 1978 and approved by the Minister of Municipal Affairs on the 11th day of August 1978 as amended, is hereby amended as follows:

1. Amend the Area Definition of the CBD (Section III) as follows:

AREA DEFINITION

For the purposes of this Plan, the Halifax Central Business District is as illustrated on Map 10 herein and includes all of the area bounded by the centre line of Brunswick Street, the ~~center~~ *centre* line of Cogswell Street, Halifax Harbour, the centre line of Spring Garden Road to Barrington Street, the western and southern~~most~~ boundary of the Maritime Centre, *the centre line of Hollis Street between the southernmost boundary of the Maritime Centre and Bishop Street, the centre line of Bishop Street between Hollis and Lower Water Streets, the centre line of Lower Water Street northerly to a prolongation of the southernmost boundary line of Maritime Centre, and easterly along a prolongation of* and the eastern extension of the southern~~most~~ boundary line of Maritime Centre to the Harbour.

2. Amend the HWDA sub-area description for the CBD Sub-Area (Section IV, page IV-1) as follows:
 - the CBD sub-area, which conforms to the Central Business District boundary ~~and is coterminous with the Intergovernmental Waterfront Committee (IWC) conceptual plan, considered by City Council in March, 1976~~
3. Amend the following maps (attached) to reflect the above noted boundary changes:
 - Map 10 (Central Business District Boundary)
 - Map 11 (CBD Sub-Area Boundaries)
 - Map 12a (CBD Height Control Area)
 - Map 13 (HWDA Boundaries)
 - Map 14 (HWDA Sub-Area Boundaries)

4. Amend Map 9 (Generalized Future Land Use) to reflect the above noted boundary changes and to re-designate the subject lands from Residential Environments to Commercial;
5. Add the following policies to Section IV as follows :
 - 2.4 **For the southern half of the block bounded by Bishop, Hollis, Salter and Lower Water Streets, on lands known as the Alexander Keith's Brewery District (PID #s 00471078, 00471060, 00003749, 00003731, 00003723 and 00480418), Council may permit a predominantly mixed-use development, by development agreement, pursuant to Implementation Policy 3.5.3 and the Regional Municipal Planning Strategy Policy CH-2.**
 - 2.4.1 **Any development permitted pursuant to Policy 2.4 shall incorporate low to medium rise building elements abutting Lower Water and Hollis Streets and a recessed, high-rise component which includes adequate separation from, or modulation of building massing in relation to, abutting heritage properties and streets.**
 - 2.4.2 **Further to Policy 2.4.1, building heights and setbacks shall comply with the following:**
 - (a) **the height of any building abutting Lower Water and Hollis Streets shall not exceed 60 feet above the mean elevation of the street in front of the building;**
 - (b) **the maximum height of the recessed tower component shall be 245 feet above the mean elevation of Lower Water Street;**
 - (c) **the tower component shall be set back a minimum of 65 feet from the Hollis Street line and 50 feet from the Lower Water Street line.**
 - (d) **minimum setbacks of the tower from the Bishop Street line shall comply with the following:**
 - (i) **Zero feet, provided that the building width does not exceed 45 feet;**
 - (ii) **15 feet, provided that the building width does not exceed 90 feet;**

- (iii) 25 feet, provided that the building width does not exceed 115 feet;
 - (iv) 35 feet, provided that the building width does not exceed 140 feet;
 - (e) the tower component shall be set back a minimum of 20 feet from the nearest property line of 1459 Hollis Street (PID# 00003756) and 60 feet from the nearest property line of Keith's Brewery (PID# 00003723);
 - (f) no portion of the building shall protrude through a viewplane or shall be visible above the Citadel Ramparts as specified by Sections 24 and 26B of the Land Use By-law.
- 2.4.3 The maximum gross floor area of the base floors of the tower (footprint) shall be 11,000 square feet each.
- 2.4.4 The development agreement for any mixed-use proposal as indicated in Policy 2.4 shall include provisions for the concurrent restoration/rehabilitation of the exterior facade of Alexander Keith Hall (Civic 1471 Hollis Street, PID# 00003723).
- 2.4.5 Further to policies 5.6 and 5.6.1, the development agreement shall ensure that any building abutting Hollis Street is complementary to the existing Hollis Street heritage buildings and streetscape by specifying complementary building materials and architectural design details.

**HALIFAX REGIONAL MUNICIPALITY
A BY-LAW TO AMEND THE HALIFAX PENINSULA LAND USE BY-LAW
CASE #00971**

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Peninsula Area Land Use By-law of Halifax as enacted by City Council of the City of Halifax on the 30th day of March, 1978 and approved by the Minister of Municipal Affairs on the 11th day of August 1978 as amended, is hereby amended as follows:

1. Amend Zoning Map 2 (ZM-2: Schedules/ Plan Areas) as shown on Map 2;
2. Add section 100(1) to the Halifax Peninsula Land Use By-law as follows:

“100(1) HALIFAX WATERFRONT (HWDA) - DEVELOPMENT AGREEMENTS

In the Halifax Waterfront Development Area, Council may, by development agreement pursuant to Section IV of the Municipal Planning Strategy:

**Alexander Keith's Brewery District (PID #s 00471078, 00471060,
00003749, 00003731, 00003723 and 00480418)**

- (a) permit a mixed-use development in accordance with Policy 2.4.”

THIS AGREEMENT made this day of , 2008,

HALKIRK PROPERTIES LIMITED,
a body corporate, in the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

- and -

OF THE SECOND PART

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for a mixed-use development including multiple-unit residential and commercial uses on the Lands pursuant to the provisions of the *Municipal Government Act* and pursuant to the provisions of the Halifax Municipal Planning Strategy and the Halifax Peninsula Land Use By-law;

AND WHEREAS the Halifax Regional Council, at a meeting held on _____, 2008, approved the said agreement to allow for a mixed-use development on the lands (referenced as Municipal Case Number 00971) subject to the registered owner of the lands described herein entering into this agreement, and at the same meeting, discharged the existing development agreement associated with the lands and filed in the Registry of Deeds in Book No. 3518, Pages 60-73, said discharge 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 and Subdivision By-law

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

1.3 Applicability of Other By-laws, Statutes and Regulations

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 and the Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

1.4 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 and the Subdivision 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.

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

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 regulations, by-laws or codes applicable to any lands.

1.6 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: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop the lands for a mixed-use development in a manner, which, in the opinion of the Development Officer, is substantially in conformance with Schedules B to Z inclusive and Schedules A-1 and A-2 attached to this agreement (plans numbered 00971-001 to 00971-027 inclusive) filed in the Halifax Regional Municipality as Case Number 00971. Alternatively to Schedules B, O, P and Q, the Developer may, through a non-substantive amendment pursuant to section 4.2 (g), develop the lands substantially in conformance with Schedules A-3 through A-6 (Plans # 00971-028 through 031).

The schedules are:

Schedule A	Legal Description of the Lands	
Schedule B	Site / Landscape Plan	Plan # 00971-001
Schedule C	Parking Lower Level (Elev. -8.0')	Plan # 00971-002
Schedule D	Parking Lower Level (Elev. 2.0')	Plan # 00971-003
Schedule E	Entry/ Parking Level (Elev. 12.0')	Plan # 00971-004
Schedule F	Level 2 - Retail ((Elev. 24.0')	Plan # 00971-005
Schedule G	Entry/ Level 1 - Residential (Elev. 34.0')	Plan # 00971-006
Schedule H	Level 2 - Residential (Elev. 45.0')	Plan # 00971-007
Schedule I	Level 3 - Residential (Elev. 55.0')	Plan # 00971-008
Schedule J	Level 4 - Residential (Elev. 65.0')	Plan # 00971-009
Schedule K	Upper Levels (5-14) - Residential	Plan # 00971-010
Schedule L	Upper Levels (15-18) - Residential	Plan # 00971-011
Schedule M	Upper Levels (19 + pent.) - Residential	Plan # 00971-012
Schedule N	Elevation - Lower Water Street	Plan # 00971-013
Schedule O	Elevation - Bishop Street	Plan # 00971-014
Schedule P	Elevation - Hollis Street	Plan # 00971-015
Schedule Q	Elevation - Salter Street	Plan # 00971-016
Schedule R	Elevation (West) - Keith Hall/ Halkirk	Plan # 00971-017
Schedule S	Elevation (East) - Keith Hall/ Halkirk	Plan # 00971-018
Schedule T	Elevation (South) - Keith Hall/ Halkirk	Plan # 00971-019
Schedule U	Elevation (North) - Keith Hall/ Halkirk	Plan # 00971-020
Schedule V	Sub-Basement - Keith Hall/ Halkirk	Plan # 00971-021
Schedule W	Basement - Keith Hall/ Halkirk	Plan # 00971-022
Schedule X	Ground Floor - Keith Hall/ Halkirk	Plan # 00971-023
Schedule Y	Level 2 - Keith Hall/ Halkirk	Plan # 00971-024
Schedule Z	Level 3 - Keith Hall/ Halkirk	Plan # 00971-025
Schedule A-1	Level 4 - Keith Hall/ Halkirk	Plan # 00971-026
Schedule A-2	Level 5 - Keith Hall/ Halkirk	Plan # 00971-027
Schedule A-3	Alternate Site/ Landscaping Plan	Plan # 00971-028
Schedule A-4	Alternate Elevation - Bishop Street	Plan # 00971-029
Schedule A-5	Alternate Elevation - Hollis Street	Plan # 00971-030
Schedule A-6	Alternate Elevation - Salter Street	Plan # 00971-031

2.2 Requirements Prior to Approval

2.2.1 Prior to the issuance of a Development Permit, the Developer shall provide to the Development Officer, unless otherwise stated by the Municipality, the following:

- (a) a Landscaping Plan in accordance with Section 2.4 of this agreement;
- (b) surveyor certification in accordance with Section 2.8 of this agreement;
- (c) identification of wind mitigation measures / solution concepts in accordance with Section 2.15 of this agreement.

2.2.2 Prior to the issuance of any Occupancy Permit, the Developer shall provide to the Development Officer, unless otherwise stated by the Municipality, the following:

- (a) certification from a Landscape Architect or security deposit in accordance with Section 2.4.7;
- (b) surveyor certification in accordance with Section 2.8 of this agreement;
- (c) certification from the Project Architect confirming the substantial performance of work on Keith Hall in accordance with Section 2.11 of this agreement;
- (d) completion of wind mitigation measures in accordance with Section 2.15 of this agreement.

2.2.3 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 and the Subdivision By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

2.3 Architectural Requirements

2.3.1 **Materials and Colour:** Exterior materials for the Alexander building (lot A-3) will include a mixture of ironstone or materials of similar appearance to ironstone (similar to Salter's Gate cut stone at the lower floor), jointed architectural precast concrete with sandstone texture and colour (similar to Salter's Gate precast on the upper floors), clear glass as shown on the attached Schedules and brick on the upper podium floors. The precast shall be similar in colour to the sandstone found on Keith Hall and the ironstone or similar material shall be similar to the stone of the existing Brewery building. All glass shall be clear and untinted. The roofing material (aluminum or other metal) may be painted / finished, the colour of which shall be decided in consultation with the Heritage Planner.

2.3.2 **Texture:** The concept of texture for the project shall adhere to the following: Iron stone or similar materials shall form the elements close to the ground (lower walls and retaining walls), deep rusticated jointing of panels, providing a cut stone pattern, shall form the arches and base portions of the building and the upper portions of the building shall include a finer, tool jointed pattern.

2.3.3 Keith Hall

- 2.3.3.1 Keith Hall will be restored back to its late 19th century appearance. The Hollis Street facade, including all detailing and decorative applications, will be restored or replaced using materials to match existing.
- 2.3.3.2 The portico over the front entrance will be repaired / replaced to match the existing in design, detail and material. All existing windows will be repaired or replaced with wooden windows to match the design and appearance of the existing ones. Should another style of window design (such as 2 over 2) be supported as an original feature, such a design may be approved by the Heritage Planner. Iron work will be constructed to replicate the cast look of the original building. Provided the design of the iron work can be supported as an original feature, it may be approved by the Heritage Planner.
- 2.3.3.3 A mansard roof designed to match the original feature will be added to a top level, one storey addition to the building. The materials used for the mansard roof will be made of slate, or a very high quality slate look-alike in consultation with the Heritage Planner. The flat roof component will be a modified bitumen type. The new dormer windows will match the original design, with wooden painted siding and the new windows will be made of wood. Sand stone will be used to cap the parapets on the two sides and the four chimneys will be restored to their previous appearance. The side walls of the roof addition will be made of brick to match the existing brick on the side facades.
- 2.3.3.4 The rear facade of the Keith Hall will remain brick with applied stucco. The design of the decking shall be reviewed as per the *Alteration Guidelines* of HRM's Heritage Property Program.
- 2.3.4 **Halkirk House:** Halkirk House will be designed to have a late 19th century appearance on Hollis Street. The Hollis Street facade, including all detailing and decorative applications, will be made of sand stone or a factory cast concrete which will be similar to the colour of the sandstone found on Keith Hall. All windows will be wood or aluminium clad single hung windows. Iron work will be constructed to replicate the cast look of Keith Hall. The materials used for the mansard roof will be made of slate or a very high quality slate look-alike. The flat roof component will be a modified bitumen type. The new dormer windows will be clad to provide a traditional Halifax dormer appearance. The side facades will be made of masonry or brick. The rear facade will be made of brick and/or pre-cast. The proposed concrete balconies will have glass and aluminum railings. The transition between the Halkirk House and the Keith Hall will be a glazed circulation core. The design will be similar to the appearance of the existing glazed link to the north side of Keith Hall.
- 2.3.5 **Relationship to Benjamin Wier House:** As a result of the Halkirk House proposal, the abutting Benjamin Wier House (1459 Hollis Street) may, if the chimneys are in use, require its two existing chimneys on its north facade to be altered. Given the Benjamin Wier House is both Municipally and Provincially registered, such alterations will require approval from both authorities as well as consent from the property owner. Should approval not be

provided, the Halkirk House may require substantial modifications to its design. Given this property is a registered heritage property, such consideration could be given as per the *Alteration Guidelines* of HRM's Heritage Property Program. However, such modifications to Halkirk House which result in a reduction in height and/or floor area, if required, shall be considered, for the purposes of this agreement, to be non-substantive in accordance with Section 4.2 of this agreement.

2.4 Landscaping

- 2.4.1 The extent of the landscaping shall be as set out in Schedule B. Furthermore, a detailed landscaping plan prepared by a Landscape Architect shall be submitted with the application for Building and Development Permits. The landscaping plan shall provide details of all ground level open spaces, courtyards and rooftop gardens and open spaces as shown on Schedule B. The plan shall specify all model numbers, quantities and manufacturers of site furnishings as well as construction details of landscaping features (planters, walls, surfaces, etc.).
- 2.4.2 All landscaped areas, including rooftops and podiums above any structure, shall include a combination of deciduous and coniferous trees, shrubs, ground cover and site furnishings (including deck chairs, tables, benches, bicycle racks, pedestrian lighting and railings). Preference shall be given to evergreen ground cover as opposed to seasonal perennials. The Developer shall ensure that all plant material is to conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas are to conform to the Canadian Nursery Sod Growers' Specifications.
- 2.4.3 Planting at ground level shall include yew, boxwood, fern, hosta and other formal planting in keeping with the concept. Street trees (on private land) will be selected to provide shade in summer and colour in autumn. Ground level deciduous trees shall have a minimum of 60 mm caliper (2.4 inch diameter). Coniferous trees shall be a minimum of 1.5 m (5 ft.) high and upright shrubs shall have a minimum height of 60 cm. (2 ft.). Street level trees within a hard surface area shall be planted with a tree grate.
- 2.4.4 Planting on rooftops and podiums above structures shall be lighter in contrast, airy, compact and carefully selected for their ability to survive in rooftop environments. Deciduous trees shall have a minimum size of 45 mm caliper (1.8 inch diameter). Coniferous trees shall be a minimum of 1.5 m (5 ft.) high and upright shrubs shall have a minimum height of 60 cm. (2 ft.). Rooftop trees will be located in planting beds or containers.
- 2.4.5 It is the responsibility of the Developer to ensure that the underground parking structures or other structures are capable of supporting loads for all landscaping as well as the anticipated mature weight of the plant material on any rooftop and podium.
- 2.4.6 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.

- 2.4.7 No Occupancy Permit shall be issued for any building constructed on the lands until such time as the landscaping associated with that phase of development has been completed in accordance with Schedule B and Section 2.4. The Developer shall provide written certification from a Landscape Architect to the Development Officer indicating that all landscaping has been completed in accordance with the above. However, where such building has been completed and all other terms of this agreement, except for landscaping, have been met, an Occupancy Permit may be issued provided that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The security deposit shall be in the form of a certified cheque or letter of credit issued by a chartered bank to the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in Schedule B. 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.

- 2.5 **Parking Area / Retail Space:** Subject to the renewal of the City Market of Halifax Co-operative Ltd. lease, the Developer agrees that at least one commercial parking level (Schedule E - Entry/ Parking Level, Elev. 12.0') will be designed for and intended to be used as temporary "spillover" retail/ market space and will incorporate the following features:

- (a) the floor to ceiling height will be approximately eleven feet;
- (b) the floor will have a special treatment conducive to a retail market environment, and meet national Building Code requirements for salt protection of the concrete, and be acceptable to the Development Officer;
- (c) columns will be treated as decorative elements incorporating features such as counters, signage and accent lighting;
- (d) the required sprinkler, piping and ducts will be treated in a decorative manner to enhance the retail atmosphere; and
- (e) indirect general lighting will be principally used in lieu of conventional sodium vapour lighting.

Failing the renewal of the City Market of Halifax Co-operative Ltd. lease, the Entry/ Parking Level, Elev. 12.0' would be of standard parking height without special finish.

2.6 Ground Floor Uses

Residential uses shall not be permitted at or below grade level (Entry/ Parking Level - Elev. 12.0') abutting Lower Water Street.

2.7 Signs

2.7.1 Exterior signs shall be generally limited to:

- (a) awning/canopy signs;
- (b) fascia and projecting signs located along the ground floor facade or other commercial level facades; and
- (c) other signs subject to the approval of the Development Officer.

2.7.2 The Developer agrees that all signs on non-registered properties indicated in section 2.7.1 be designed to generally follow the municipality's basic principles for signage on heritage properties and that municipal sign permit applications be approved by the Development Officer, in consultation with the Heritage Planner, to ensure that the building signs are generally in keeping with or complementary to those of the Alexander Keith's Brewery district.

2.8 Surveyor Certification re: Viewplanes

Prior to the issuance of both a Development Permit and Occupancy Permit for the Alexander (lot A-3), the Developer shall provide to the Development Officer written certification from a professional surveyor that both the proposed development and completed building does not violate sections 24 and 26B of the Halifax Peninsula Land Use By-law.

2.9 Variations

Notwithstanding section 2.1, the Development Officer may approve variations to the internal floor plans affecting the type and number of residential units, population count, internal floor layout of the commercial uses and parking levels provided that Section 2.6 is met and that the overall design is substantially in conformance with Schedules B through Z and A-1 and A-2.

2.10 Lot Consolidation

Lot A-4 may be consolidated with a portion of Lot A-2 in accordance with the Land Use By-law and Subdivision By-law requirements. The effect of this consolidation will be that the new lot will be registered as a municipal heritage property.

2.11 Completion of Keith Hall

- 2.11.1 No Occupancy Permit shall be issued for the Alexander until such time as the restoration and addition to Keith Hall has been completed in accordance with Section 2.3.3. The Developer shall provide written certification from the Project Architect to the Development Officer indicating that all restoration and addition has been completed in accordance with the above. However, where such building has been completed and all other terms of this agreement, except for the restoration and addition to Keith Hall, have been met, an Occupancy Permit may be issued provided that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the restoration and addition to Keith Hall. The security deposit shall be in the form of a certified cheque or letter of credit issued by a chartered bank to the Development Officer. Should the Developer not complete the restoration and addition to Keith Hall within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the restoration and addition to Keith Hall as set out in Section 2.3.3. 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.
- 2.11.2 The Municipality will permit the security deposit to be reduced from time to time based on certification from the Project Architect confirming substantial performance of a percentage of the restoration and addition work but at no time will the Municipality reduce the deposit to less than 110 percent of the estimated cost to complete the restoration and addition.

2.12 Maintenance

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, 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.

2.13 Archaeological Monitoring and Protection

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

2.14 Environmental Remediation

The Developer agrees to comply with the legislation, regulations and guidelines of the Province of Nova Scotia with regard to the management of contaminated sites and environmental remediation of the lands.

2.15 Wind Mitigation

The Developer agrees to implement the recommendations contained within the Pedestrian Wind Study Final Report dated December 19, 2007. The Developer shall consult with the Development Officer and the wind engineering consultant prior to the issuance of a Development Permit for the Alexander (lot A-3). The Development Officer may, if deemed necessary, require additional wind tunnel testing to determine mitigation measures / solution concepts. These measures/ solutions shall be shown on the building plans submitted for Development Permit approval and completed prior to the issuance of an Occupancy Permit.

2.16 Encroachments

Any proposed building encroachments into the street rights-of-way, illustrated on the attached Schedules or otherwise, shall require HRM approval and a separate encroachment permit / license as per the requirements of the Encroachment By-law (By-law E-200).

3.0 STREETS AND MUNICIPAL SERVICES

3.1 General Provisions

- 3.1.1 All construction shall satisfy the Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.
- 3.1.2 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 HRM 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.
- 3.1.3 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.
- 3.1.4 Solid Waste Facilities: The Alexander building (Lot A-3) shall include designated internal space for three stream (refuse, recycling 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 Inspector in consultation with Solid Waste Resources.

- 3.1.5 Underground Utilities/ Street Right-of-Way: 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 Hollis and Bishop Streets which abut the site. It is expected that any cabling or pole removal costs associated with the placement of primary services underground will be borne by the respective utility. The Developer is responsible for ensuring that the requirements of the applicable utility companies are met.
- 3.1.6 Sidewalk construction, planting, street lighting and site furnishings at ground/ sidewalk level shall be the responsibility of the Developer and shall comply with HRM's Capital District Urban Design Project standards. The Development Officer shall consult with the HRM Streetscape Program's Senior Landscape Architect and the Development Engineer on the detailed design prior to the issuance of a Development Permit. The Developer agrees to provide streetscaping of a type consistent with the aforementioned municipal standards subject to detailed design and review.
- 3.1.7 Street lighting: The Developer shall install light poles and street lights for street lighting. These light poles and street lights shall have the ballast in the fixture, meet the illumination standards of the Municipal Service Systems Specifications and the design standards of the HRM's Capital District Urban Design Project and shall be approved by the Development Officer, in consultation with the Development Engineer and the HRM Streetscape Program's Senior Landscape Architect.

4.0 AMENDMENTS

4.1 Substantive Amendments

Amendments to any matters not identified under Section 4.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

4.2 Non-Substantive Amendments

The following items are considered by both parties to be non-substantial matters and may be amended by resolution of Regional Council:

- (a) changes to the architectural appearance of the building or the design, layout and positioning of the building, provided that plans are submitted for any changes to the building design and that such changes, in the opinion of Council, are minor in nature;
- (b) changes to the architectural requirements / details as outlined in Section 2.3 and corresponding plans / Schedules which, in the opinion of Council and the Heritage Planner, are minor in nature;

- (c) changes to the landscaping measures as shown on Schedule "B" or as detailed in section 2.4 which, in the opinion of Council, are minor in nature;
- (d) the granting of an extension to the date of commencement of construction as identified in Section 6.3.1 of this agreement;
- (e) the length of time for the completion of the development as identified in Section 6.3.3 of this agreement;
- (f) changes to the parking area / retail space as outlined in section 2.5; and
- (g) inclusion of Keith Lane right-of-way (PID# 00480418) and a portion of the Longshoreman's property (PID# 00003749) into the agreement in the event that the Developer obtains ownership of the right-of-way and the extension of the parking garage levels into these lands and an addition to and articulation of the western residential tower façade, similar to the eastern facade, as shown on Schedules A-3 through A-6.

5.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

5.1 Enforcement

The Developer agree 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 allow for such an inspection during any reasonable hour within one day of receiving such a request.

5.2 Failure to Comply

If the Developer fail 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; and/or
- (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 development 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 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.

6.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 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 or Land Registration Office for Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

6.2 Subsequent Owners

- 6.2.1 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 the Council.
- 6.2.2 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.

6.3 Commencement of Development

- 6.3.1 In the event that construction on the Lands has not commenced within five years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, 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.
- 6.3.2 For the purposes of this section, commencement shall mean the issuance of a Construction Permit, site excavation and substantial completion of the first underground parking level of the development (Schedule "C" - Parking Lower Level).
- 6.3.3 If the Developer fails to complete the development, or after ten years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, 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;
- (c) discharge this Agreement.

6.4 Completion of development

Upon the completion of the development or portions thereof, or within/after ten years from the date of registration of this Agreement with the Registry of Deeds or Land Registration Office, 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;
- (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 Halifax Peninsula, 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., 2008.

SIGNED, SEALED AND DELIVERED in
the presence of

HALKIRK PROPERTIES LIMITED

Per: _____

Per: _____

SEALED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax
Regional Municipality duly authorized in that
behalf in the presence of

=====

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____

Acting Municipal Clerk