


**Item No. 11.1.9**  
**Halifax Regional Council**  
**January 14, 2014**

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

Original signed by 

**SUBMITTED BY:**

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** December 10, 2013

**SUBJECT:** Case 18817: Non-Substantive Amendment to an Existing  
Development Agreement – 1475 Hollis Street and 1496 Lower Water  
Street, Halifax

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**ORIGIN**

Application by Halkirk Properties Limited

**LEGISLATIVE AUTHORITY**

*HRM Charter, Part VIII, Planning & Development*

**RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Approve the proposed amending development agreement, as contained in Attachment A, to allow an extension to the date of commencement of the “Alexander” development at 1496 Lower Water Street, Halifax; and
2. Require that the proposed amending development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

An application has been received from Halkirk Properties Limited for a non-substantive amendment to the development agreement for 1475 Hollis Street (Keith Hall building) and 1496 Lower Water Street, Halifax (Map 1 and Attachment A). The purpose of the amendment is to allow for an extension to the date of commencement of the “Alexander”, a 21-storey mixed-use development at the corner of Lower Water and Bishop Streets. Pursuant to the existing development agreement, this amendment is non-substantive and only requires a resolution of Regional Council.

The applicant also intends to proceed with non-substantive amendments to the agreement in order to undertake exterior alterations and internal change of use to the Keith Hall building at 1475 Hollis Street, a municipally registered heritage property, and the proposed 5-storey “Halkirk House” building next to Keith Hall. These amendments and application for “substantial alteration” to a heritage property will require review by the Heritage Advisory Committee as well as Council, and will be the subject of a separate staff report in the near future.

### **Existing Agreement**

The existing development agreement, herein referred to as the “Agreement”, was approved by Regional Council on September 9, 2008, following Council’s adoption of site-specific amendments to the Municipal Planning Strategy and Land Use By-law (Attachment B). The Agreement allows for the following:

- Keith Hall: exterior alterations, façade improvements, a one-storey addition to the top of the building and interior change of use from commercial to residential;
- “Halkirk House”: a proposed 5-storey residential infill building next to Keith Hall; and
- The “Alexander”: a 21-storey mixed-use development at the corner of Lower Water and Bishop Streets.

The Agreement was registered on January 16, 2009 and required that the Alexander development be commenced within 5 years, which included a requirement for obtaining municipal construction permits, site excavation and substantial completion of the first underground parking level. The Agreement stipulates that, in the event that the development does not commence within the 5-year timeframe, Council may, by resolution, either discharge the Agreement or grant an extension to the date of commencement through a non-substantive amendment to the Agreement. The Agreement also stipulates that the Alexander development is not to be granted an occupancy permit until such time as the extensive façade renovations and addition to Keith Hall be completed (or a security deposit be provided), which includes window repair and replacement, stone and iron work and the repair or replacement of the portico over the front entrance. Essentially, the approval to develop the Alexander was closely tied to the requirement for extensive renovations to Keith Hall.

### **Location, Subject Properties and Surrounding Area:**

The properties which are subject to the Agreement:

- are located within the southern half of the block bounded by Lower Water, Bishop, Hollis and Salter Streets which contains the “Alexander Keith’s Nova Scotia Brewery” (refer to Map 1);

- include a portion of Lot A-2, which contains Keith Hall (a registered heritage property), at 1475 Hollis Street and the Brewery buildings;
- include Lot A-3, which has frontage on Lower Water and Bishop Streets, contains surface parking and a portion of the existing Keith's Brewery complex, is the site for the proposed "Alexander" building and is not a municipally registered heritage property; and
- include Lot A-4, on Hollis Street south of Keith Hall, which is currently vacant, is the site for the proposed "Halkirk House" and is not a municipally registered heritage property.

The surrounding area contains a mix of registered heritage and contemporary buildings as well as buildings of varying sizes. Surrounding buildings include:

- numerous registered heritage buildings such as the Brewery buildings which are owned by Halkirk Properties, the Benjamin Wier House at 1459 Hollis Street, the Lieutenant Governor's residence (across Hollis Street) at 1451 Barrington Street and the Black-Binney House at 1472 Hollis, across from Keith Hall; and
- more recent buildings such as Bishop's Landing, 1360 Lower Water Street, Waterfront Place, the Waterford at 1343 Hollis Street, Maritime Centre, Four Points Sheraton and Salter's Gate.

### **Zoning and Enabling Policy:**

With regard to the Downtown Halifax Secondary Municipal Planning Strategy (DHSMPS) and Land Use By-law and the Regional Municipal Planning Strategy (RMPS), the following are relevant to this application:

- The site is within the DH-1 Zone, falls within Precincts #1, 2 and 4 (Southern Waterfront, Barrington Street South and Lower Central Downtown) and is encumbered by Viewplane #6;
- Policy 90D of the DHSMPS enables the consideration of non-substantive amendments to approved development agreements (Attachment B).

### **Proposal**

The applicant is requesting a non-substantive amendment to the Agreement to allow for a 3-year extension to the date of commencement of the "Alexander" development at 1496 Lower Water Street. To date, only the work on the interior and exterior of Keith Hall has commenced. The façade renovations and interior work are ongoing. Due to market conditions, the applicant has not commenced construction on the Alexander and is in the process of redesigning the project to allow for rental units instead of condominiums. Attachment C includes the applicant's request and a summary of cost estimates and the work completed to date on Keith Hall.

### **DISCUSSION**

The proposal has been reviewed in relation to the applicable policies of the Regional MPS, the Downtown Halifax MPS, and those policies of the Halifax MPS which existed at the time the Agreement was approved. In staff's opinion, the proposed 3-year time extension is consistent with the applicable policies. As indicated in the Background section of this report, the Agreement allowed for the construction of the Alexander tower immediately, provided that the renovations to Keith Hall were carried out or a security deposit was submitted in advance of occupancy of the tower. The applicant has, in good faith, commenced costly work on the exterior

façade of Keith Hall without the benefit of income from the proposed Alexander project which would have been provided if it had been constructed in advance. Given the uncertainties in the financial markets since the date of approval of the Agreement and the extent of work carried out to date on Keith Hall, it is reasonable to grant a 3-year time extension to the Alexander project.

### **Conclusion**

The proposed non-substantive amendment to the Agreement is consistent with the intent of the Agreement and applicable municipal policies. Therefore, staff recommends that Regional Council approve the proposed non-substantive amendment as outlined in the amending agreement attached to this report (Attachment A).

### **FINANCIAL IMPLICATIONS**

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

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through the HRM website, responses to inquiries, and public accessibility to the meetings of Council. A public information meeting and a public hearing are not required for a non-substantive amendment to a development agreement. The decision is made by resolution of Council.

The proposed development agreement will potentially impact the following stakeholders: local residents and property owners, community or neighbourhood organizations, and business and professional associations.

### **ENVIRONMENTAL IMPLICATIONS**

No implications identified.

### **ALTERNATIVES**

1. Council may choose to approve the proposed amending development agreement as set out in Attachment A of this report. This is the recommended course of action. A decision of Council to approve the proposed amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Council may choose to approve the proposed amending development agreement subject to modifications. This may necessitate further negotiations with the applicant.
3. Council may choose to refuse the proposed amending development agreement, and in

doing so, must provide reasons based on a conflict with the MPS policies in effect at the time the agreement was approved. A decision of Council to refuse the proposed amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

### **ATTACHMENTS**

Map 1	Zoning
Attachment A	Proposed Amending Development Agreement
Attachment B	Primary Policies of Downtown Halifax MPS and former Halifax MPS
Attachment C	Applicant's Submission

Existing Development Agreement available upon request.

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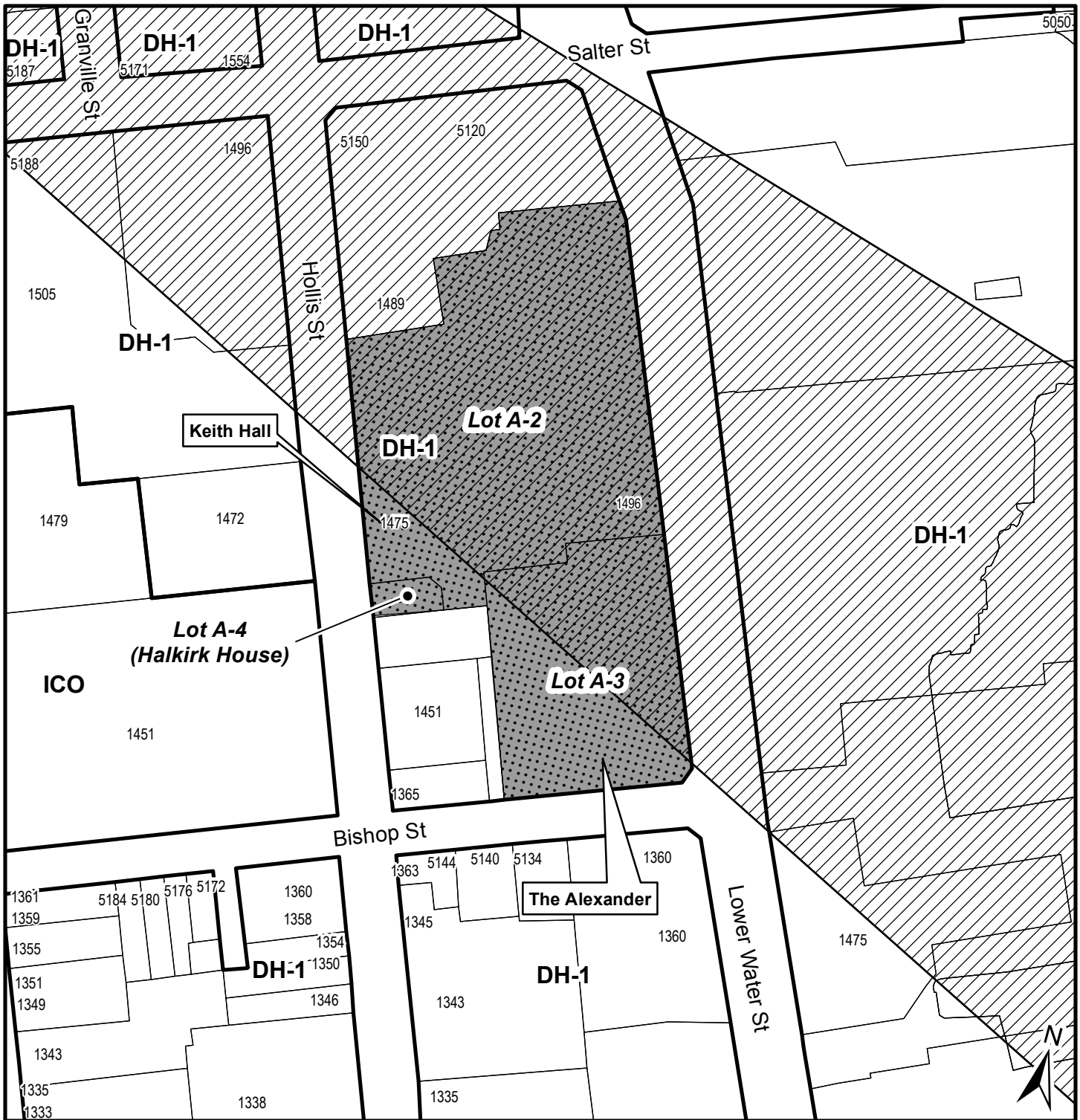
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Paul Sampson, LPP, Planner, 490-6259

Report Approved by: Kelly Denty, Manager of Development Approvals, 490-4800


Report Approved by: Brad Anguish, Director of Community and Recreation Services, 490- 4933

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## Map 1 - Zoning

Keiths Brewery Site  
Lower Water Street  
Halifax

 Area of development agreement

 View plane

Downtown Halifax Plan Area

### Zone

DH-1 Downtown Halifax 1

ICO Institutional, Cultural and Open Space

**HALIFAX**  
REGIONAL MUNICIPALITY  
DEVELOPMENT APPROVALS

0 20 40 m

This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

HRM does not guarantee the accuracy of any representation on this plan.

## **ATTACHMENT A:**

## Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this            day of            , 2014,

BETWEEN:

**[Insert Name of Corporation/Business LTD.]**,  
a body corporate, in the Province of Nova Scotia,  
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at Lower Water, Bishop and Hollis Streets, Halifax (PID # 00471078, 00003723, 00471060), and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Regional Council of the Municipality approved an application by the Developer to enter into a development agreement to allow for a mixed-use development on the Lands, which said Development Agreement was registered at the Land Registration Office in Halifax as Document Number 92581199 (hereinafter called the "Existing Agreement");

AND WHEREAS the Lands have been registered as a municipal heritage property pursuant to the provisions of the Municipality's Heritage Property By law (By-law H-200) as amended from time to time;

AND WHEREAS the Developer has requested non-substantive amendments to the provisions of the Existing Agreement;

AND WHEREAS the Regional Council for the Municipality approved these requests at a meeting held on [INSERT DATE] , referenced as Municipal Case Number **18817**;

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

The Existing Agreement is amended as follows:

1. Subsection 6.3.1 shall be deleted and replaced with the following revised subsection:

“6.3.1 In the event that development on the Lands has not commenced by January 16, 2017, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.”

2. Subsection 6.3.3 shall be deleted and replaced with the following revised subsection:

“6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 4.2, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.”

**IN WITNESS WHEREAS** the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

**SIGNED, SEALED AND DELIVERED** in  
the presence of:

(Insert Registered Owner Name)

\_\_\_\_\_  
Witness

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

**HALIFAX REGIONAL MUNICIPALITY**

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

\_\_\_\_\_  
Witness

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

**MAYOR**

\_\_\_\_\_  
Witness

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

**MUNICIPAL CLERK**



**Attachment B**  
**Primary Policies of Downtown Halifax MPS and former Halifax MPS**

**Downtown Halifax Municipal Planning Strategy**

**CHAPTER 8: IMPLEMENTATION**

**8.6A TRANSITION TO THIS PLAN**

During the course of preparation of this Plan, development continued to occur in the Plan area according to the previous MPS policies and land use by-law requirements. At the time of Plan adoption, development agreement applications in various stages of review and approval remained in progress. In consideration of the fact that these projects were designed within the parameters of the previous policies of the Halifax Municipal Planning Strategy, the substantial investment made in the preparation of such applications and that they were submitted in advance of this Plan being given first reading by Council, it is reasonable that provision be made to allow Council to consider them after the effective date of this Plan under the previous policies. Similarly, non-substantive amendments to approved development agreements should also be able to be considered under the previous policies.

It is not, however, appropriate that development that is not in conformance with this Plan be afforded longstanding rights relative to time frames for project approval and completion. Developments that are not constructed and completed within a reasonable time period after Plan adoption should be required to comply with the requirements of the Land Use By-law.

**Policy 90D** Applications for non-substantive amendments to approved development agreements shall be considered under the policies in effect at the time the agreement was approved.

**Former Halifax Municipal Planning Strategy**

**SECTION IV – HALIFAX WATERFRONT DEVELOPMENT AREA, OBJECTIVES AND POLICIES: 2. LAND USE:**

- 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).



Case 18817  
Attachment C:  
Applicant's Submission

April 19<sup>th</sup>, 2013

Halifax Regional Municipality  
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5

Attention Mr. Paul Sampson:

**Re: Request for a Non-Substantive Amendment to the Development Agreement between Halkirk Properties Limited and the Halifax Regional Municipality Dated January 9<sup>th</sup>, 2009.**

Halkirk Properties Limited is requesting that the Halifax Regional Municipality (HRM) allow two non-substantive amendments to the above referenced Agreement. The first request is an extension to the date of commencement for the "Alexander" development and the second is a change of design for the rear façade of Keith Hall on the new to be created east side top floor addition.

Our requests are for the following reasons;

**I. Extension of the Commencement Date of the Alexander - sections 4.2 (d), 6.3.1, and 6.3.2.**

The Developer, Halkirk Properties Limited had initially decided to construct a condominium project with approximately 120 residential units. The developer has concluded that the plan for condominiums is no longer economically viable due to market conditions for luxury condominiums. The Developer has changed their plan for condominiums and is currently redesigning the project as a 200 unit multi-residential rental project. The Developer requires additional time to complete a further design as well as a new market analysis of the rental market. The Developer is requesting a 3 year extension of the commencement date as per the terms and conditions of the above referenced Development Agreement.

**II. Change of Design- Exterior Rear Elevation, Top Floor Keith Hall**

The Development Agreement requires the restoration of Keith Hall which is currently being done. This includes the restoration of the top floor of Keith Hall which was removed approximately 60 years ago. The Developer is requesting a design change for the east side of this new addition to take advantage of the views overlooking Halifax Harbour and creating an outdoor space in the form of a patio. This design request does not affect the prominence of the front exterior faced which is the significant grandeur of this property. Plans for this change are included in this application.

Yours truly,

Original signed

William B. Greenwood  
Halkirk Properties Limited



**Paul Sampson, MCIP, LPP**  
Planner, Development Approvals  
Community & Recreation Services  
Halifax Regional Municipality  
PO Box 1749,  
Halifax, Nova Scotia  
B3J 3A5

November 7, 2013

Dear Paul:

**Re: Summary of Work - Keith Hall Restoration**

As per your request I have attached a summary of those costs related to the restoration of Keith Hall. It is important to note that the following expenditures are still undetermined at this point in time. They are as follows;

- installation of exterior LED lighting of the exterior
- restoration of the Portico and main step entrance (a significant expenditure)
- restoration of the stain glass windows on the east side of the rear of the property
- repair of the exterior masonry finish – east side
- installation of natural gas and conversion of boilers
- replacement of the exterior sidewalk along Hollis Street

For your information we have entered into a new Lease with a corporate tenant confirmed to commence occupancy of the Premises towards the middle of December, 2013. We expect to have the main door entrance which has been restored installed by this time.

If you would like to visit the site with any of your staff we would be pleased to show you the work completed to date. At this point in time we are not certain as to the additional costs required to complete the Project since the nature of the restoration has to be carried out on a time plus materials basis. We expect at least another \$450K will be needed to complete the project. This is an estimate only at this time.

2.

**Keith Hall Cost Summary  
as at September 30, 2013**

GF Duffus - Architectual Design	\$	48,585.94
CBCL - Structural Engineering	\$	15,838.80
Coastal Restoration - Exterior Restoration	\$	904,429.76
Schooner Construction - Window & Door Restoration	\$	116,360.88
FC O'Neil Scriven - Exterior Lighting Design	\$	1,260.00
Twin City Electric - Conduit for Exterior Lighting	\$	18,596.03
Campbell Commeau - Structural Consulting	\$	17,755.00
Tuscumbia Iron Works - Wrought Iron Fencing	\$	6,589.40
Marrimac - Exterior Fire Bell Sprinkler Work	\$	5,100.00
Miscellaneous Contractors - Permits/Miscellaneous Work	\$	12,815.26
Project Management	\$	100,422.61

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<b>Costs to Date</b>	<b>\$</b>	<b>1,247,753.68</b>
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Please let me know if you need any further information.

Yours truly,

Original signed

William B. Greenwood, Principal  
Greenwood Lane Inc.  
Authorized Project Manager  
and Property Manager for Halkirk Properties Limited