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Chebucto Community Council
April 12, 2010

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: March 24, 2010

SUBJECT: **Case 01317: Amending Stage II Development Agreement - Home Depot, Halifax**

SUPPLEMENTARY REPORT

ORIGIN

Approval of the Stage I Amending Agreement on March 1, 2010, and conclusion of the appeal period on March 20, 2010, allowing consideration of the Stage II Amending Agreement.

RECOMMENDATION

It is recommended that Chebucto Community Council:

1. Approve by resolution the Stage II Amending Agreement as shown in Attachment "A" of this report; and
2. Require the agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Home Depot is located at 368 Lacewood Drive, next to the Bicentennial Highway where it intersects with Lacewood Drive (Map 1). The subject lands are zoned Schedule K under the Halifax Mainland Land Use By-law. Development under Schedule K requires a two stage approval by Council. The first stage involves Council approval of a Stage I concept plan and development agreement, and a public hearing is required. Stage II requires more detailed plans and development agreements for individual phases of the development, and can be approved by resolution of Council provided that the plans are consistent with the approved Stage I Agreement. Stage I and Stage II agreements have existed on the Home Depot property since 2000, and have been amended several times.

On March 1, 2010, Chebucto Community Council approved an amendment to the Stage I Agreement for Home Depot to allow outdoor storage on the parcel. The expiration of the 14 day appeal period on March 20, 2010, allows the Stage II Amending Agreement to be considered for approval by resolution.

DISCUSSION

Proposal

The Amending Stage II Agreement (Attachment "A"), includes both text descriptions and a new diagram, Schedule "H", to clearly denote the areas where display and storage will be permitted.

Outdoor display includes fully assembled items that are being displayed for immediate sale, and will be permitted along the front of the building and beside the garden centre along the side of the building. The property owner will also be permitted to display trailers for sale in up to 10 parking spaces along the property line abutting the Bicentennial Highway.

Outdoor storage may include items for immediate sale, but may also include excess stock, equipment, tools, and supplies. Storage will be permitted in the loading area, along the rear of the building, and beside the garden centre.

The Amending Stage II Agreement will also permit the existing cart corrals and propane exchange, and clarifies that the transformer and propane tank at the rear of the building are considered to be appropriately screened by the building and topography, and that additional screening is not required.

Request from Abutting Property Owner

An abutting property owner, Sun Life Assurance Company of Canada, submitted a letter to Council during their consideration of the Stage I agreement. Sun Life Assurance Company of Canada owns three parcels of land to the rear of the Home Depot property, including an undeveloped parcel immediately abutting the rear of Home Depot, and an office building at 36

Solutions Drive. The letter requested five specific additions to the amending agreements. These requests are addressed below:

1. The Applicant to be restricted from storing any materials outdoors that are unsightly, odorous, or attractive to rodents or other pests.

Staff feel that it is unreasonable to prohibit materials that are odorous or attractive to pests, as many of the plants, flowers, and supplies within the garden centre may have these characteristics and are part of the normal operation of the business. Staff agree that the lands should not be permitted to become unsightly, however, these matters are routinely addressed under Part XV - Dangerous or Unsightly Premises of the *Halifax Regional Municipality Charter*, and are not typically administered through development agreements.

2. That any and all material stored outdoors by the Applicant shall be stored neatly and securely.

The proposed Stage II Amending Agreement does include wording in Section 2.9.1 (a) and (b), that requires materials to be stored in a neat, orderly, and secure fashion.

3. That the outdoor storage of bulk or loose materials (i.e., salt, mulch, soil, sand, gravel, or any other similar materials) not be permitted.

As a result of this request, wording has been added to Section 2.9.1 (a) and (b) of the proposed Stage II Amending Agreement which prohibits the storage of bulk loose aggregate materials such as salt, soil, sand and gravel. The Developer has agreed to this revision.

4. That the Applicant be required to fence the portion of the property abutting Sun Life's.

There are currently two chain link fences that separate the properties, one at the top of the slope and one at the bottom of the slope. Staff do not feel that it is necessary to insert a clause in the agreement with respect to this item.

5. That the Applicant be required to provide adequate visual screening to the rear of the property (abutting Sun Life's property).

The rear of the Home Depot property, where it abuts Sun Life's, is subject to a fairly substantial change of grade. The topography itself partially serves as a visual barrier. The existing Stage II Agreement on the Home Depot lands includes a clause that indicates that screening to the rear is to be achieved on the adjacent parcel. A clause that attempts to impact future development on an adjacent parcel is not typical, but may have been inserted at the time because the lands were under common ownership, and also partially to acknowledge the challenge of the slope on the lands. The agreement on Sun Life's property does require retention of the vegetation on the entire parcel abutting the Home Depot lands, for the purpose of screening, and does not permit any development of this site. As such, staff consider the rear property line of Home Depot to be

appropriately screened, even though the screening is located on the adjacent property, and see no need to modify the existing agreement in this regard.

BUDGET IMPLICATIONS

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

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

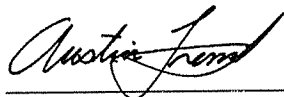
1. Council may approve the Stage II Amending Agreement (Attachment "A"). This is the recommended course of action.
2. Council may choose to approve the Stage II Amending Agreement with modifications which are acceptable to the applicant. Such modifications may require further negotiations with the applicant and/or revisions to the attached amending agreement.
3. Council may refuse to enter into the Stage II Amending Agreement. Pursuant to the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal, based on the policies of the MPS.

ATTACHMENTS

Map 1	Location, Zoning, and Notification
Attachment A	Stage II Amending Agreement
Attachment B	Excerpts from Existing Stage II Agreement

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.

Report Prepared by : Patricia Hughes, Planner I, 490-1948





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



Map 1 - Location and Zoning

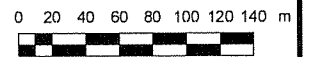
368 Lacewood Drive
Halifax

-  Subject area
-  Area of notification

Halifax Mainland
Land Use By-Law Area

Zone

- K Schedule K
- I-3 General Industrial
- US Urban Settlement



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Mainland Land Use By-Law Area

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

Attachment B
Stage II Amending Agreement

THIS AMENDING AGREEMENT made this ____ day of _____, 2010,

BETWEEN:

HOME DEPOT OF CANADA INC.,
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 Halifax Regional Municipality previously entered into a Stage I development agreement with Clayton Developments Limited and the Shaw Group Limited for a mixed commercial / residential development on February 23, 2000 (Municipal Case No. 00122), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6525 at Pages 538 to 551 (hereinafter called the "Existing Stage I Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage I development agreement with Clayton Developments Limited and the Shaw Group Limited for multiple unit dwelling and park uses on May 28, 2001 (Municipal Case No. 00358), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6765 at Pages 763 to 774 (hereinafter called the "First Amending Stage I Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage I development agreement with Pacrim Developments Incorporated for a licensed lounge in conjunction with an existing restaurant Lot BC-5 on November 7, 2001 (Municipal Case No. 00337), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6908 at Pages 955 to 957 (hereinafter called the "Second Amending Stage I Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage I development agreement with Clayton Developments Limited and the Shaw Group Limited to allow for residential multiple use buildings on Parcels BC-9B, BC-9C, H-1 and H-2 on March 22, 2002 (Municipal Case No. 00399), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6999 at Pages 1222 to 1232 (hereinafter called the "Third Amending Stage I Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage I development agreement with Clayton Developments Limited and the Shaw Group Limited to allow for residential multiple use buildings on Parcel Z on January 20, 2005 (Municipal Case No. 00691), which said agreement is recorded at the Registry of Deeds at Halifax as Document Number 81302797 (hereinafter called the "Fourth Amending Stage I Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage I development agreement with Home Depot of Canada Inc. to allow for additional outdoor storage and display on Parcel BC-7 on *INSERT DATE*, 2010 (Municipal Case No. 01317), which said agreement is recorded at the Registry of Deeds at Halifax as Document Number _____ (hereinafter called the "Fifth Amending Stage I Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into a Stage II development agreement with the Shaw Group Limited for a mixed commercial/ residential development on February 23, 2000 (Municipal Case No. 00122), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6525 at Pages 552 to 583 (hereinafter called the "Existing Stage II Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage II development agreement with The Home Depot Canada to permit the preparation and serving of food and beverages on parcel BC-7 on October 30, 2000 (Municipal Case No. 00279), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6698 at Pages 569 to 573 (hereinafter called the "First Amending Stage II Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage II development agreement with the Pacrim Developments Inc. to allow for a licensed lounge in conjunction with an existing restaurant on Parcel BC-5 on October 15, 2001 (Municipal Case No. 00337), which said agreement is recorded at the Registry of Deeds at Halifax in Book 6889 at Pages 1165 to 1167 (hereinafter called the "Second Amending Stage II Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage II development agreement with the Pacrim Developments Inc. to allow for the enclosure of a seasonal exterior patio on Parcel BC-5 on April 28, 2004 (Municipal Case No. 00627), which said agreement is recorded at the Registry of Deeds at Halifax in Book 7716 at Pages 955 to 958 (hereinafter called the "Third Amending Stage II Agreement");

AND WHEREAS Halifax Regional Municipality previously entered into an amending Stage II development agreement with the 2049297 Ontario Inc. to allow for automobile rental use on Parcel BC-8 on September 6, 2006 (Municipal Case No. 00917), which said agreement is recorded at the Registry of Deeds at Halifax as Document Number 86122588 (hereinafter called the "Fourth Amending Stage II Agreement");

AND WHEREAS the Developer is now the registered owner of certain lands located at 368 Lacewood Drive (*INSERT PID*), Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer wishes to further amend the Existing Stage II Agreement to allow for additional outdoor storage and display on the Lands (hereinafter called the "Fifth Amending Stage II Agreement");

AND WHEREAS the Chebucto Community Council of Halifax Regional Municipality approved this request at a meeting held on (*INSERT DATE*), 2010, referenced as Municipal Case No. 01317;

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

1. Section 2.1 of the Existing Stage II Agreement as amended is further amended by inserting the words "Schedule "H" Outdoor Display and Storage" after the words "Schedule "G" Landscaping Plan".
2. The Existing Stage II Agreement as amended is further amended by adding the following Subsection following Subsection 2.2.1 (a) (v):

“(vi) Limited outdoor display and storage”.
3. Section 2.2.2 (e) of the Existing Stage II Agreement as amended is repealed and replaced with the following:

“(e) except as permitted under Section 2.2.1 (ii), (iii) and (vi) and Section 2.9, outdoor storage and display uses such as flea markets and amusement fairs.”
4. Section 2.4.1 of the Existing Stage II Agreement as amended is further amended by replacing the number, "525" with the number "415".
5. Section 2.9 of the Existing Stage II Agreement as amended is repealed and replaced with the following:

“2.9 Outdoor Storage and Display

2.9.1 Parcel BC-7:

- (a) Outdoor storage is permitted on Parcel BC-7 only and shall be limited to the areas described below and more specifically as shown on Schedule "H". Outdoor storage includes the storage of any items that are to be sold, from time to time, at this location, without limitation, such as lumber, bricks, and sheds, and items that are associated with the operation of the business, such as equipment, tools, and

supplies, which must be stored in a neat, orderly, and secure manner. The storage of bulk loose aggregate materials such as salt, soil, sand, gravel or similar shall not be permitted. Permitted outdoor storage areas are:

- (i) the enclosed garden centre;
 - (ii) the yard to the side of the garden centre, provided that materials are contained entirely beside the garden centre and do not extend closer to the front property line than the main building wall;
 - (iii) abutting the rear of the building, provided that a drive aisle is maintained; and
 - (iv) the yard to the side of the loading area, along the property line abutting the bicentennial highway, provided that materials are contained entirely beside the loading area and do not extend closer to the front property line than the main building wall.
- (b) Outdoor display of merchandise is permitted on Parcel BC-7 only and shall be limited to the areas described below and more specifically as shown on Schedule "H". Outdoor display includes merchandise being displayed for immediate sale in a neat, orderly and secure manner to attract the attention of customers, but does not include items that are being temporarily stored or stockpiled due to space constraints, incomplete products requiring assembly, or the storage of bulk loose aggregate materials such as salt, soil, sand, gravel or similar. Permitted outdoor display areas are:
- (i) the enclosed garden centre;
 - (ii) abutting the front facade of the building, provided that a pedestrian thru way is maintained;
 - (iii) the yard to the side of the garden centre, provided that materials are contained entirely beside the garden centre and do not extend closer to the front property line than the main building wall; and
 - (iv) a maximum of 10 parking spaces along the side property line abutting the Bicentennial Highway which may be used to display trailers.
- (c) Cart corrals shall be permitted in the parking areas on Parcel BC-7.
- (d) A propane exchange station is permitted in the parking area on Parcel BC-7, but must not exceed the equivalent of two parking spaces in area. The propane exchange shall be located such that there are no municipal manhole covers within the fenced/caged enclosure.
- (e) No materials of any kind, including permanent structures, temporary storage, display, or trailers are to be placed over any municipal manhole covers on Parcel BC-7.

- (f) No storage or display shall be permitted on Parcel BC-7 that causes an obstruction to traffic or pedestrian safety.
- (g) Refuse containers and waste compactors on Parcel BC-7 shall be confined to the loading areas of the building and shall be screened by opaque fencing or masonry walls.
- (h) Propane tanks and electrical transformers shall be located and secured in accordance with the applicable approval agencies. These facilities shall be screened by means of opaque fencing, masonry walls and/or suitable landscaping. For those located to the rear of the building on Parcel BC-7, the building and topography will be considered appropriate screening.

2.9.2 Parcels BC-4, BC-5, and BC-8:

- (a) Refuse containers and waste compactors on Parcels BC-4, BC-5, and BC-8 shall be confined to the loading areas of each building and shall be screened by opaque fencing or masonry walls.
 - (b) Propane tanks and electrical transformers on Parcels BC-4, BC-5, and BC-8 shall be located and secured in accordance with the applicable approval agencies. These facilities shall be screened by means of opaque fencing, masonry walls and/or suitable landscaping.
6. The Existing Stage II Agreement as amended is further amended by adding the plan attached hereto, as Schedule "H" Outdoor Display and Storage to the Existing Stage II Agreement following Schedule "G" Landscaping Plan.
 7. All other terms of the Existing Stage II Agreement as amended shall remain in full force and effect.
 8. This Fifth Amending 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 Fifth Amending Agreement until it is discharged by the Council.

WITNESS that this Amending Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

Signed, sealed and delivered in the presence of:

per: _____
=====

Sealed, Delivered and Attested by the proper signing officers of Halifax Regional Municipality duly authorized on that behalf in the presence of

per: _____

HOME DEPOT OF CANADA INC.

per: _____
=====

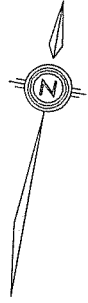
HALIFAX REGIONAL MUNICIPALITY

per: _____

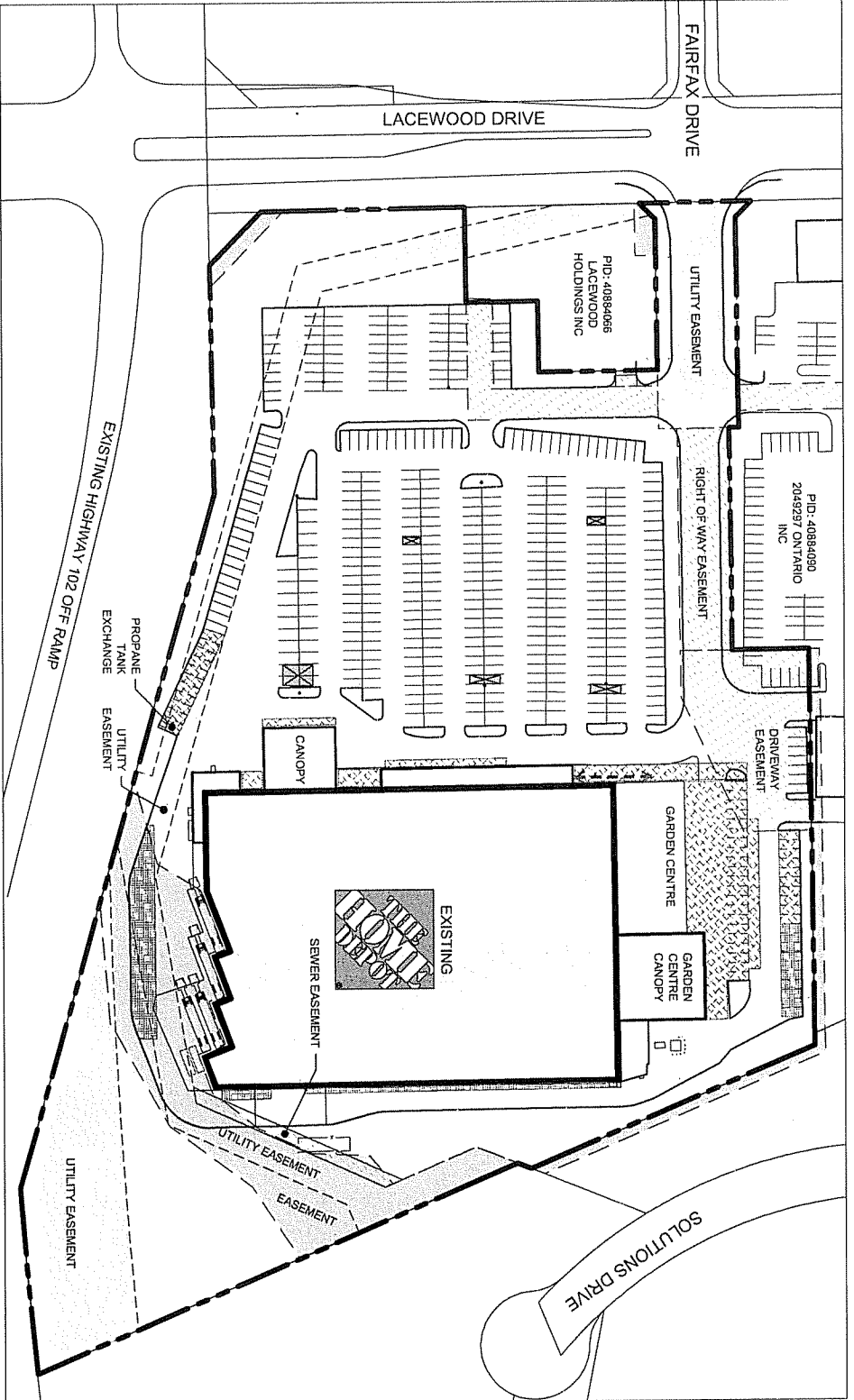
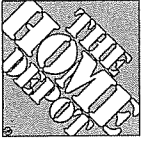
MAYOR

per: _____

MUNICIPAL CLERK



LEGEND	
	EXISTING PARKING
	STORAGE AREA
	DISPLAY AREA



**EXISTING HOME DEPOT SITE
WITH OUTDOOR STORAGE / DISPLAY AREAS
SCHEDULE H**

LACEWOOD DRIVE, HALIFAX, NOVA SCOTIA
Date: 17 - November - 2009
Dwg: D08422100_V16

NOTES:
EXISTING HOME DEPOT SITE INFORMATION TAKEN FROM TOPOGRAPHIC SURVEY
CONDUCTED ON 07/24/08 BY GUST 2008
ALL OTHER INFORMATION BASED ON AERIAL PHOTOGRAPHY AND PROVINCIAL MAPPING.
DISPLAY - GOODS DISPLAYED FOR SALE
STORAGE - GOODS STORED OUTSIDE BUT NOT NECESSARILY ACTUALLY FOR SALE.



SCALE = 1:250 METRIC



Attachment D
Excerpts from Existing Stage II Agreement

“2.1 Schedules

The Developer shall develop and use the Lands in conformance with the site plans, design drawings, renderings and supporting technical documents, attached as the following Schedules to this Agreement:

Schedule “A”	Legal Description of a portion of the Lands of The Shaw Group, Lacewood Drive, (portion of PID #40694853), Halifax.
Schedule “B”	Site Plan
Schedule “C”	Elevation Drawings (Parcel BC-7)
Schedule “D”	Servicing and Grading Plan
Schedule “E”	Erosion and Sedimentation Control Plan and Stormwater Drainage Plan
Schedule “F”	Supporting Document - Stormwater Management Plan and Erosion and Sedimentation Control Procedures
Schedule “G”	Landscaping Plan

2.2 Permitted Uses

2.2.1 The use of the Lands permitted by this Agreement, subject to its terms and as generally illustrated on the Schedules attached hereto, are the following:

(a) Parcel BC-7:

- (i) a commercial building used for the retail sale of hardware supplies, housewares and household appliances, building materials and related goods;
- (ii) an attached, enclosed outdoor area, which may contain a permanent or temporary greenhouse, for the retail sale of lawn and garden supplies, patio furniture, landscaping materials and greenhouse plants;
- (iii) rental of tools, equipment and vehicles ancillary to the sale, delivery and installation described in Section (i) and (ii) above, and provided such tools and equipment are stored indoors or in an enclosed outdoor storage yard in the loading area;
- (iv) vehicular parking, loading and circulation areas;
- (v) open space buffer areas, landscaping and walkways.

(b) Parcels BC-4, BC-5 and BC-8:

- (i) a maximum of four (4) commercial buildings used for retail, office and/or service commercial purposes;
- (ii) vehicular parking, loading and circulation areas; and
- (iii) open space buffer areas, landscaping and walkways

2.2.2 The following uses are prohibited on the Lands:

- (a) automotive sales, rental and repair
- (b) drinking establishments, excepting licenced restaurants
- (c) adult entertainment uses and amusement centres
- (d) industrial uses, including warehousing and distribution
- (e) except as permitted under Section 2.2.1 (ii) and (iii), and Section 2.9, outdoor storage and display uses such as flea markets and amusement fairs

2.4 Parking and Circulation

2.4.1 The number and layout of parking spaces on the Lands shall be as generally illustrated on Schedule "B", to include approximately 525 spaces for Parcel BC-7 and 200 spaces for Parcels BC-4, BC-5 & BC-8. The size of parking spaces shall be as specified in the land use by-law, and parking for the disabled shall be as required by the Building Code Act, including the provision of applicable above-ground signage. The Development Officer may approve a reduction in the amount of parking spaces indicated on the Schedule if such reduction results in increased landscaping of the parking areas.

2.6.3 The Developer agrees that any Stage II development agreement prepared for the property abutting the Lands to the south (Parcel BC-9) shall ensure that the large format retail store on Parcel BC-7 is adequately screened and buffered.

2.9 Outdoor Storage and Display

2.9.1 Outdoor storage is permitted on Parcel BC-7 only and shall be limited to the enclosed garden centre and an enclosed storage yard in the loading area, as generally shown on Schedule "B".

2.9.2 Outdoor display of merchandise is permitted on Parcel BC-7 only and shall be limited to the enclosed garden centre and the sidewalk area immediately abutting the front facade of the building under the roof canopy.

2.9.3 Refuse containers and waste compactors on any Parcel shall be confined to the loading areas of each building, and shall be screened by opaque fencing or masonry walls.

2.9.4 Propane tanks and electrical transformers on any Parcel shall be located and secured in accordance with the applicable approval agencies. These facilities shall be screened by means of opaque fencing, masonry walls and/or suitable landscaping. "