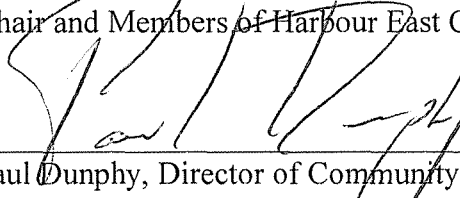


10.1.1

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: August 17, 2009

SUBJECT: Case 01230: Development Agreement, 249-251 Windmill Road
SUPPLEMENTARY REPORT

ORIGIN

- An application by WM Apartments Limited to amend the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) in order to permit an expansion of their existing multi-unit development at 249/251 Windmill Road, to permit a new 12-storey, 103 unit residential building by development agreement.
- On June 30, 2008, Regional Council and Harbour East Community Council (HECC) held a joint public hearing regarding the requested MPS amendments and proposed development agreement.
- At the June 30, 2008 meeting Regional Council approved the proposed amendments to the MPS and LUB. The proposed development agreement could not be considered by HECC until the Province approved the amendments.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Approve the proposed development agreement to permit a 12 storey, 103 unit residential building; an existing 4 storey, 207 unit residential building; and an existing 2 unit dwelling as set out in the proposed development agreement included as Attachment A.
2. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by Harbour East Community Council on request of the applicant, from the date of final approval of said agreement by Harbour East Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND/DISCUSSION

On June 30, 2009 Regional Council and HECC held a joint public hearing to consider amendments to the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) and a proposal to enable a 12 storey, 103 unit residential building at 249-251 Windmill Road.

Regional Council approved the proposed MPS and LUB amendments as proposed in the Supplementary Staff Report dated May 5, 2009. The proposed development agreement set out in that Supplementary Staff Report was part of the public hearing process and is included as Attachment A of this report. However, HECC could not consider the development agreement until the MPS and LUB amendments became effective as set out under the *Halifax Regional Municipality Charter Act (HRM Charter)*.

The MPS and LUB amendments have been reviewed by Service Nova Scotia and Municipal Relations as set out in section 223 of the *HRM Charter* and an ad has been placed in the Chronicle Herald. As a result, the amendments are now in effect and HECC is in a position to consider the proposed development agreement as set out in Attachment A.

Staff are of the opinion that the proposed development agreement is consistent with the intent of the MPS amendments adopted by Regional Council on June 30, 2009 and recommend that HECC approve the proposed development agreement as set out in Attachment A of this report.

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 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. Council may choose to approve the proposed development agreement set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing.

3. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed agreement is consistent with the policies and intent of the MPS.

ATTACHMENTS

Attachment A: Proposed Development 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 : Joseph Driscoll, Senior Planner, 490-3991

Report Approved by: 
Kurt Pyle, Acting Manager of Planning Services, 490-7066

BETWEEN:

OF THE FIRST PART

- and -

OF THE SECOND PART

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 Dartmouth Land Use By-law and the Regional 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 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.

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.

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 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: DEFINITIONS

- 2.1** All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 SCHEDULES

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, in conformance with the Schedules attached to this Agreement filed in the Halifax Regional Municipality as Case Number 01230:

The Schedules are:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Preliminary Landscaping Plan
Schedule D	East Elevation (Harbourside)
Schedule E	West Elevation (Front)
Schedule F	North & South Elevations
Schedule G	Main Floor Plan Layout
Schedule H	Internal Parking Plan

3.2 Requirements Prior to Approval

- 3.2.1** Prior to the issuance of any Municipal Permits, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional/Commercial) process.

- 3.2.2 Prior to the issuance of a Construction Permit for the new building, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Municipality:
- (a) Lighting Plan in accordance with Section 3.7 of this Agreement; and
 - (b) Landscaping Plan in accordance with Section 3.9 of this Agreement.
- 3.2.3 Prior to the issuance of the Municipal Occupancy Permit for the new building, the Developer shall provide the following to the Development Officer pursuant to this Agreement:
- (a) Written confirmation from the Development Engineer indicating compliance with Part 4 “Streets and Municipal Services” of this Agreement;
 - (b) Certification from a qualified Professional Engineer that the Developer has complied with the Erosion and Sedimentation Control Plan required pursuant to Section 5.2 of this Agreement;
 - (c) Certification from a qualified Professional Engineer indicating that the Developer has complied with the Stormwater Management Plan required pursuant to Section 5.1 of this Agreement;
 - (d) Certification from a qualified professional indicating that the Developer has complied with the Landscaping Plan required pursuant to Section 3.9 of this Agreement;
 - (e) Certification from a qualified professional indicating that the Developer has complied with the Lighting Plan required pursuant to Section 3.7 of this Agreement; and
 - (f) Certification from a qualified Professional Engineer that the Developer has complied with the Grading Plan required pursuant to Section 3.9.3.2 of this Agreement
- 3.2.4 Further to sub-section 3.2.3, notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the new building 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 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.

- 3.2.5 Where the written text of this Agreement conflicts with information provided in the attached Schedules, the written text of this Agreement shall prevail.

3.3 GENERAL DESCRIPTION OF LAND USE

- 3.3.1 The uses of the Lands permitted by this Agreement are the following:

- (a) A new 103 unit, 12-storey residential building on PID 41086018 as per the attached Schedules and in accordance with the provisions of this Agreement;
- (b) An existing 207 unit, four-storey residential building and associated development located on PID 40811085 as per Schedule B; and
- (c) An existing two-unit residential dwelling located on PID 40811085 as per Schedule B.

3.4 EXISTING BUILDINGS

Harbourshore Acres Apartments

- 3.4.1 The existing three-storey, 207 unit residential building on the Lands shall be subject to the maintenance of landscaping, parking lot configuration and minimum parking spaces as per sub-sections 3.6 and 3.9 of this Agreement and as generally illustrated on Schedules "B" and "C".

- 3.4.1.1 Further to Clause 3.4.1, permits for the existing three-storey, 207 unit residential building shall be subject to the applicable requirements of the Dartmouth Land Use By-law, and all other applicable clauses of this Agreement.

Existing Two-unit Dwelling Civic No. 257 Windmill Road

- 3.4.2 The existing two-unit dwelling on the Lands shall not be subject to Clauses 3.5 through 3.8 inclusive, Clauses 5 and 6, and Schedules C through H of this Agreement.

- 3.4.2.1 Notwithstanding sub-clause 3.4.2, redevelopment of the two-unit dwelling shall be subject to the applicable requirements of the Dartmouth Land Use By-law.

3.5 NEW BUILDING

3.5.1 The Developer agrees that the 12-storey, 103 unit multi-unit residential building proposed to be constructed on the Lands shall comply with the provisions of this section and be located as generally illustrated on the Schedules.

3.5.2 Architectural

Architectural treatment such as parapets, cornices, curtain walls shall be continued around all sides of the building as identified on Schedules "D", "E" and "F".

3.5.2.1 The architectural details shall use materials that are raised to create shadow lines and provide for the articulation of the architectural element of the building.

3.5.3 Blank Walls

Large blank or unadorned walls shall not be permitted. The scale of large walls shall be tempered by the introduction of textural plantings and trellises, and architectural detail to create shadow lines (implied windows, cornice lines, offsets in the vertical plane, etc.) as identified on the Schedules.

3.5.4 Exposed Foundation

Any exposed foundation in excess of 0.5 metres in height shall be architecturally detailed.

3.5.5 Building Material

Exterior building materials shall not include vinyl siding but may include any one or more of the following:

- pre-cast concrete
- clay masonry
- non-combustible cladding;
- concrete split face masonry;
- cut stone masonry;
- random stone masonry; or
- acceptable equivalent in the opinion of the Development Officer.

3.5.6 Functional Elements

All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.

3.5.7 The building shall be designed such that the mechanical systems (HVAC, cooking exhaust fans, etc.) are not visible or abutting residential properties. Furthermore, no mechanical

equipment or exhaust fans shall be located between the building and the adjacent residential properties unless screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.

3.5.8 Roof

All roof mounted mechanical and/or telecommunication equipment shall be visually integrated into the roof design or screened from public view.

3.5.9 All balconies shall feature a glass railing system.

3.5.10 Minor Changes

The Developer shall be entitled to minor modifications to the architectural requirements of this section provided the changes are minor in nature, in the opinion of the Development Officer and comply with the intent to this Agreement.

3.6 PARKING, CIRCULATION AND ACCESS

3.6.1 The internal driveway layout and the number and layout of parking spaces on the Lands shall be as generally illustrated on Schedules "B" and "H". The Developer agrees that the parking on the Lands shall comply with the following:

- (a) All parking areas, driveways, circulation aisles and pathways shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable equivalent in the opinion of the Development Officer. Notwithstanding, pathways shall not be finished with asphalt.
- (b) Parking lots are to be delineated by curbing, such curbing shall not be asphalt.

3.6.2 Minimum vehicular parking shall be provided for each building in accordance with the following:

- (a) Proposed 12-Storey, 103 Unit Residential Building Building (PID 41086018) shall have a minimum of 113 dedicated parking spaces; of which a minimum of 106 spaces shall be underground.
- (b) The existing Harbourshore Apartments three-storey, 207 unit residential building (PID 40811085) shall have a minimum of 188 dedicated parking spaces; of which a minimum of 79 spaces shall be underground; and

- (c) The existing two-unit dwelling of Civic No. 257 Windmill Road (PID 40811085) shall maintain a driveway access to Windmill Road with the ability to accommodate the parking of two vehicles on the site.

3.6.3 The Development Officer may approve upon application by the Developer, changes to the parking and circulation layout as illustrated on Schedules "B" and "H" provided such changes further the intent of Section 3.5 and this Agreement and do not result in a reduction in the number of parking spaces.

3.6.4 The Lands subject to this Agreement shall share a deeded access for the driveway connecting to Windmill Road, as identified on Schedule "B".

3.6.5 Directional signage delineating the one-way nature of the existing site access driveway shall be provided in the area of the median divided entrance and exit driveway at Windmill Road.

3.7 BUILDING AND SITE LIGHTING

3.7.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.7.2 The Developer shall prepare a Lighting Plan and submit it to the Development Officer for review to determine compliance with this Agreement. The Lighting Plan shall contain, but shall not be limited to, the following:

- (a) Plans indicating the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, other devices;
- (b) Description of the illuminating devices, fixtures, lamps, supports and other devices. This description may include, but is not limited to, manufacturers' catalogue cuts and drawings including sections where required and;
- (c) The Lighting Plan and description shall be sufficient to enable the Development Officer to ensure compliance with the requirements of this article will be secured. If such plan and description cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall submit evidence of compliance by certified test reports as performed by a recognized testing lab.

- 3.7.3 Further to sub-section 3.7.2, should the Developer desire to substitute outdoor light fixtures or lamps and install them on the Lands after a permit has been issued, the Developer shall submit all changes to the Development Officer for approval, with adequate information to assure compliance with section 3.7.

3.8 PRIVATE AMENITY SPACE

- 3.8.1 Private amenity space for the new building shall consist of the following features and minimum areas:

(a)	Internal common room:	2,312 sq. ft. as per Schedule "G"
(b)	Internal Exercise room:	1,173 sq. ft. as per Schedule "G"
(c)	Podium deck:	9,482 sq. ft. as per Schedule "B"
(d)	Passive recreation area:	6,600 sq. ft. as per Schedule "C"
(e)	Residential unit balconies/patios:	65 sq. ft./unit
(f)	Roof-top deck	1,843 sq. ft.

- 3.8.2 The podium deck shall generally be developed as shown on Schedule "C" complete with benches and landscaping, the intent of which is to facilitate a minimum of five distinct areas designed for leisure gatherings.

- 3.8.3 The Passive Recreation Area as shown on Schedule "C" shall be developed as a useable area finished with a surface, at the discretion of the Development Officer, conducive to enabling passive recreation and leisure activities.

- 3.8.4 Notwithstanding the required minimum as per clause 3.8.1, the Applicant may request the square footage of the roof-top deck be decreased with corresponding square footage increases in balcony sizes, at the discretion of the Development Officer.

3.8.4.1 The roof-top deck is to be located on the southwest corner of the roof-top fronting on Halifax Harbour.

3.9 LANDSCAPING

- 3.9.1 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.

3.9.2 Landscaping Plan

Prior to the issuance of a Construction Permit, the Developer agrees to provide a Landscaping Plan for the Lands which complies with the provisions of this section and generally conforms with the overall intentions of the Preliminary Landscaping Plan shown

on Schedule C. The Landscaping Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.

3.9.2.1 The Development Officer may approve minor modifications to the species, size and location of plant stock, provided such modifications, in the opinion of the Development Officer, enhance the attractiveness and visual appearance of the Lands.

3.9.3 Landscape Details

Planting details for each type of plant material proposed on the plan shall be provided, including species list with quantities, size of material, and common and botanical names (species and variety).

3.9.3.1 Construction Details or Manufacturer's Specifications for all constructed landscaping features such as fencing, retaining walls, stairs, gazebo and benches, shall be provided to the Development Officer, and shall describe their design, construction, specifications, hard surface areas, materials and placement so that they will enhance the design of the building and the character of the surrounding area.

3.9.3.2 A Grading Plan with existing and proposed grades shall be provided prior to the issuance of Development Permit.

3.9.3.3 Mass shrub plantings or mixed shrub and ground cover plantings are preferred instead of perennial beds.

3.9.3.4 No landscaping greater than 0.6 metres (2 feet) in height shall be permitted within the turning circle.

3.9.4 Podium Landscaping

The Landscaping Plan shall provide details of all ground level open spaces as shown on Schedule "C". The plan shall specify all model numbers, quantities and manufacturers of site furnishings, as well as construction details of landscaping features (gazebo and benches).

3.9.4.1 Planting on the parking podium shall be carefully selected for their ability to survive in rooftop environments. Podium trees shall be located in planting beds or containers.

3.9.4.2 The Developer shall ensure that the underground parking structures or other structures are capable of supporting loads from all landscaping, as well as the anticipated mature weight of the plant material on any rooftop and podium.

3.9.5 Fencing

Chain link fencing, or at the discretion of the Development Officer, other suitable fencing, shall be used to delineate the Passive Recreation Area from the adjacent property boundaries (CNR line and DND lands) as per Schedule "C". The intent of the fencing shall prevent access to the rail line, while maintaining the Halifax Harbour views.

3.9.6 Retaining walls

All proposed retaining walls shall be constructed of a decorative precast concrete or modular stone retaining wall system or equivalent.

3.9.6.1 Upright shrubs with a minimum of 50% being coniferous shall be located at the base of all retaining walls. All shrubs shall be a minimum height of 2 feet and be planted with a minimum on centre spacing of 3 feet. Low maintenance ground covers or vines in association with shrubs and retaining walls should be used.

3.9.6.2 All retaining walls greater than 4 ft. in height are to be designed and certified by a professional engineer.

3.9.6.3 All retaining wall systems are to be identified including the height and type of fencing proposed in conjunction with it. A construction detail of any fence and wall combination should be provided and certified by a professional engineer.

3.9.7 Private Walkways

Walkways shall be located as shown on Schedules B and C and composed of poured in place concrete. Existing walkways shall be repaired or replaced as needed.

3.9.7.1 All pedestrian walkways shall be constructed in accordance with the applicable HRM sidewalk specifications.

3.9.7.2 Notwithstanding sub-section 3.9.7.1 walkways shall be 1.5 metres wide and consist of raised 100mm thick concrete on a granular surface.

3.9.7.3 Walkways shall be designed to barrier free standards where possible.

3.9.8 Passenger Waiting Area

A pick-up and drop-off waiting area shall be developed immediately south of the main entrance complete with two benches as per Schedule C.

3.9.9 Screen Utilities

Shrub material shall be used to screen any electrical transformers or other utility boxes.

3.9.10 Compliance with Landscaping Plan

Prior to issuance of the Occupancy Permit for the new building, the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.

3.9.11 Notwithstanding subsection 3.9.10, the Occupancy Permit for the new building may be issued provided the Developer supplies a security deposit in the amount of 120 per cent of the estimated cost to complete the landscaping. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by 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 this Section of the Agreement. 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.

3.10 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, 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.

3.10.1 Reinstatement

All disturbed areas shall be reinstated to original condition or better.

3.11 CONSTRUCTION/SALES TRAILER

A trailer shall be permitted on either PID 41086018 or PID 40811085 for the purpose of housing equipment, materials and office related matters relating to the construction and

sale of the development in accordance with this Agreement. The construction trailer shall be removed from the Lands prior to the issuance of the Occupancy Permit.

3.11.1 Further to clause 3.11, the construction/sales trailer shall be located on the Lands to the rear of the existing 207 multi-unit building.

3.12 OUTDOOR STORAGE AND DISPLAY

No outdoor storage shall be permitted on the Lands.

3.12.1 Propane tanks and electrical transformers shall be located on the Lands in such a way to ensure minimal visual impact. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing/masonry walls with suitable landscaping.

4.0 STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All construction shall satisfy 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.

4.2 Off-Site Disturbance

Any disturbance to existing off-site infrastructure resulting from the new 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.

4.3 Underground Services

All secondary electrical, telephone and cable service shall be underground installation.

4.4 Municipal Water Distribution and Sanitary Sewers

The water distribution system shall conform with the design and construction requirements of the Halifax Regional Water Commission.

4.4.1 The sanitary sewer system shall conform with the design and construction standards of the Municipal Service Systems Manual, unless otherwise acceptable to the Development Engineer.

4.5 Solid Waste Facilities

The new building shall include designated 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.

4.5.1 All refuse and recycling materials shall be contained within the new building.

4.6 Recreation Corridor Easement

The Developer agrees to provide an easement in favour of the Municipality for up to a 10 metre wide easement over PID 40175887, for the purpose of locating a portion of a proposed recreation corridor as identified in the Regional Municipal Planning Strategy and Active Transportation Plan.

4.6.1 The exact location of the proposed recreation corridor is to be determined, and the right to locate the easement on PID 40175887, shall be at the sole discretion of the Municipality.

4.6.2 Wherever possible, the easement shall be co-located with any pre-existing easement.

4.6.3 The Municipality shall provide one point of access to PID 40175887.

5.0 ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans

Prior to the commencement of any onsite works on the Lands, including earth movement and/or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall engage a qualified professional to prepare a Stormwater Management Plan based on the provisions of Schedule "B" and "C" which identifies structural and vegetative stormwater management measures such as, infiltration, retention, and detentions controls, vegetative swales, filter strips, and buffers to minimize any significant adverse impacts on receiving watercourse during and after construction. The plans shall indicate the sequence of construction, the areas to be disturbed, all proposed erosion and sedimentation control measures and stormwater management measures, including a monitoring/sampling program, which are to be in place prior to and during development unless otherwise acceptable to the Development Engineer.

5.1.1 Prior to the commencement of any onsite works on the Lands, including earth movement and/or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall install snow fence or

other appropriate continuous physical barrier or delineation and signage in the field delineating the area of disturbance. The snow fence or other appropriate continuous physical barrier or delineation and signage shall be maintained by the Developer for the duration of the construction and the snow fence or other appropriate continuous physical barrier or delineation and signage in the field may only be removed only upon the issuance of the Occupancy Permit.

- 5.1.2 All storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

5.2 Erosion and Sedimentation Control

Prior to the commencement of any onsite works on the Lands, including earth movement and/or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall have prepared by a Professional Engineer and submitted to the Municipality for review by the Development Engineer and the Department of the Environment (if applicable) a detailed Erosion and Sedimentation Control Plan shall be based upon Schedules "B" and "C". The plans shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by the Nova Scotia Department of the Environment and Labour.

Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.

5.3 Failure to conform to Plans

If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.

6.0 AMENDMENTS

6.1 Substantive Amendments

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

6.2 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of the Council.

- (a) Changes to the exterior architectural appearance of the buildings including colour, materials and window to wall ratio and provided that plans are submitted for any

changes to the building design and that such changes, in the opinion of the staff, are minor in nature;

- (b) A reduction in the floor area of the building; and
- (c) Extensions of time requested for the signing and execution of the Agreement, and the commencement and/or completion of the new building construction.

7.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 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.

7.2 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 30 days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (a) the Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;
- (b) the Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the 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;

- (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.

8.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.1 Registration

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

8.2 Subsequent Owners

8.2.1 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.

8.2.2 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.

8.3 Commencement of Development

In the event that construction on the lands has not commenced within 5 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

- 8.3.1 If the Developer fails to complete the development, or after 10 years from the date of registration of this Agreement with the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.

8.4 Completion of development

Upon the completion of the development, 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 Dartmouth, as may be amended from time to time.

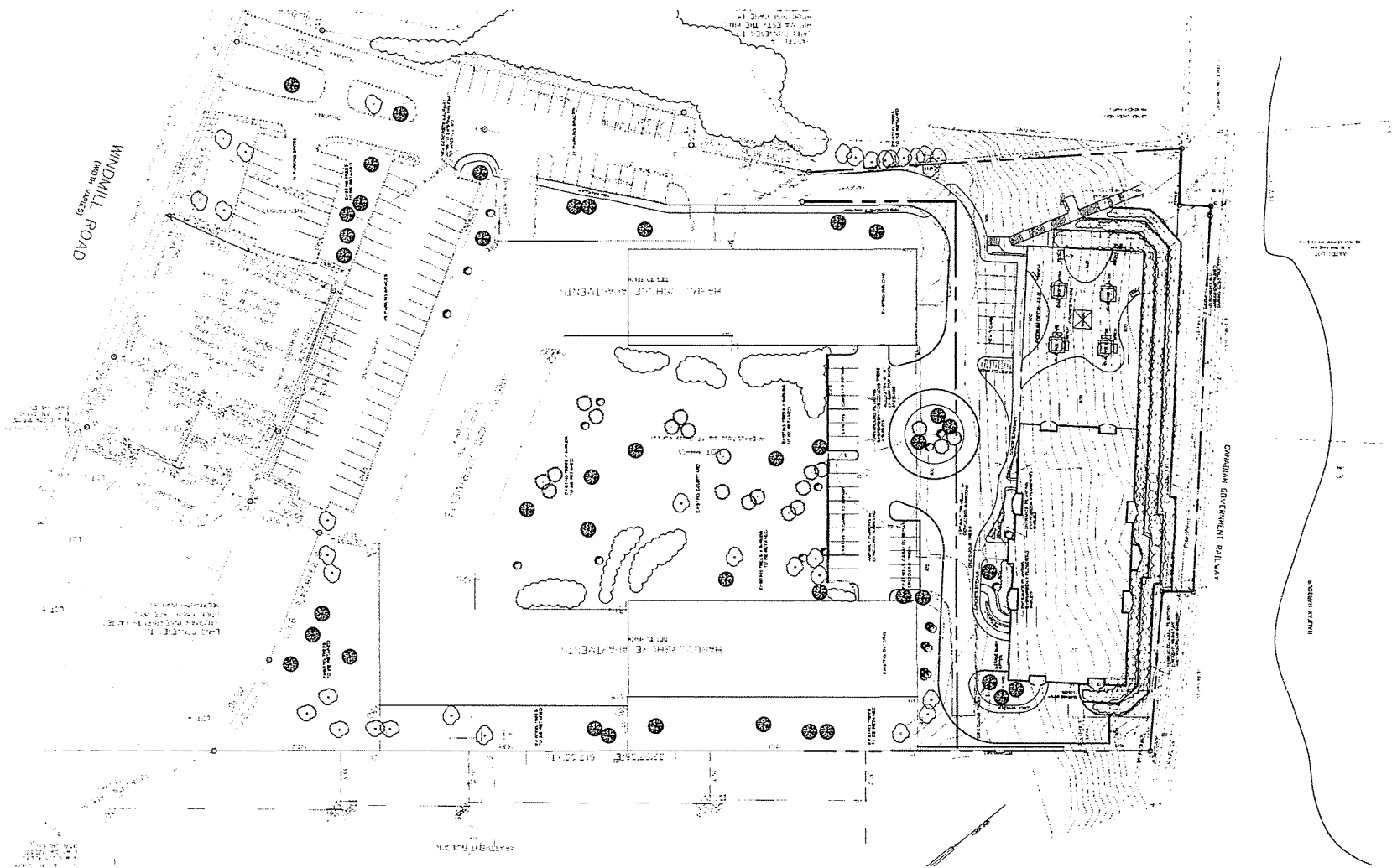
WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

SIGNED, SEALED AND DELIVERED
in the presence of

) **W.M. APARTMENTS LIMITED**
)
) Per: _____
)
)
) Per: _____
)

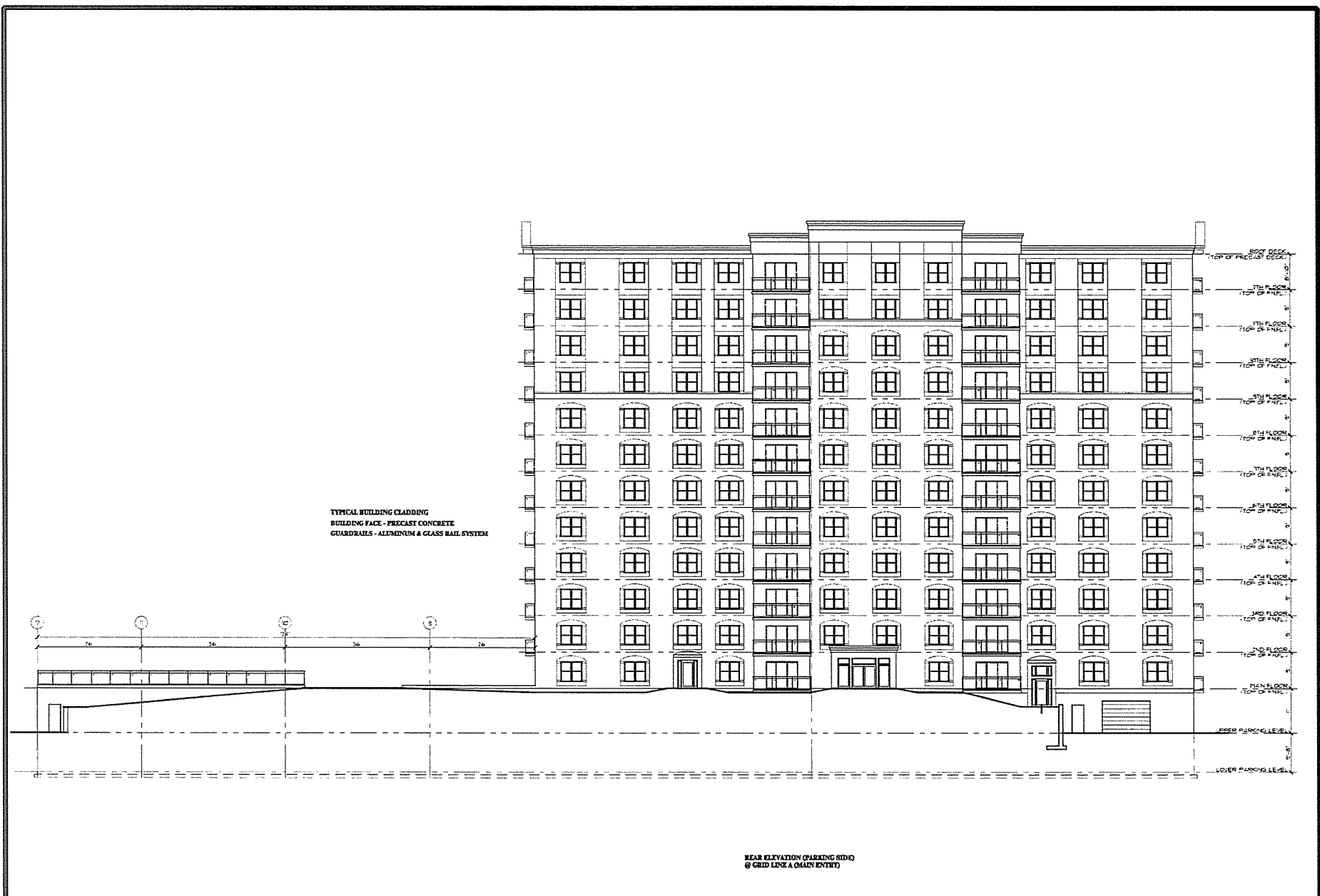
SEALED, DELIVERED AND
ATTESTED to by the proper
signing officers of Halifax Regional
Municipality duly authorized
in that behalf in the presence
of

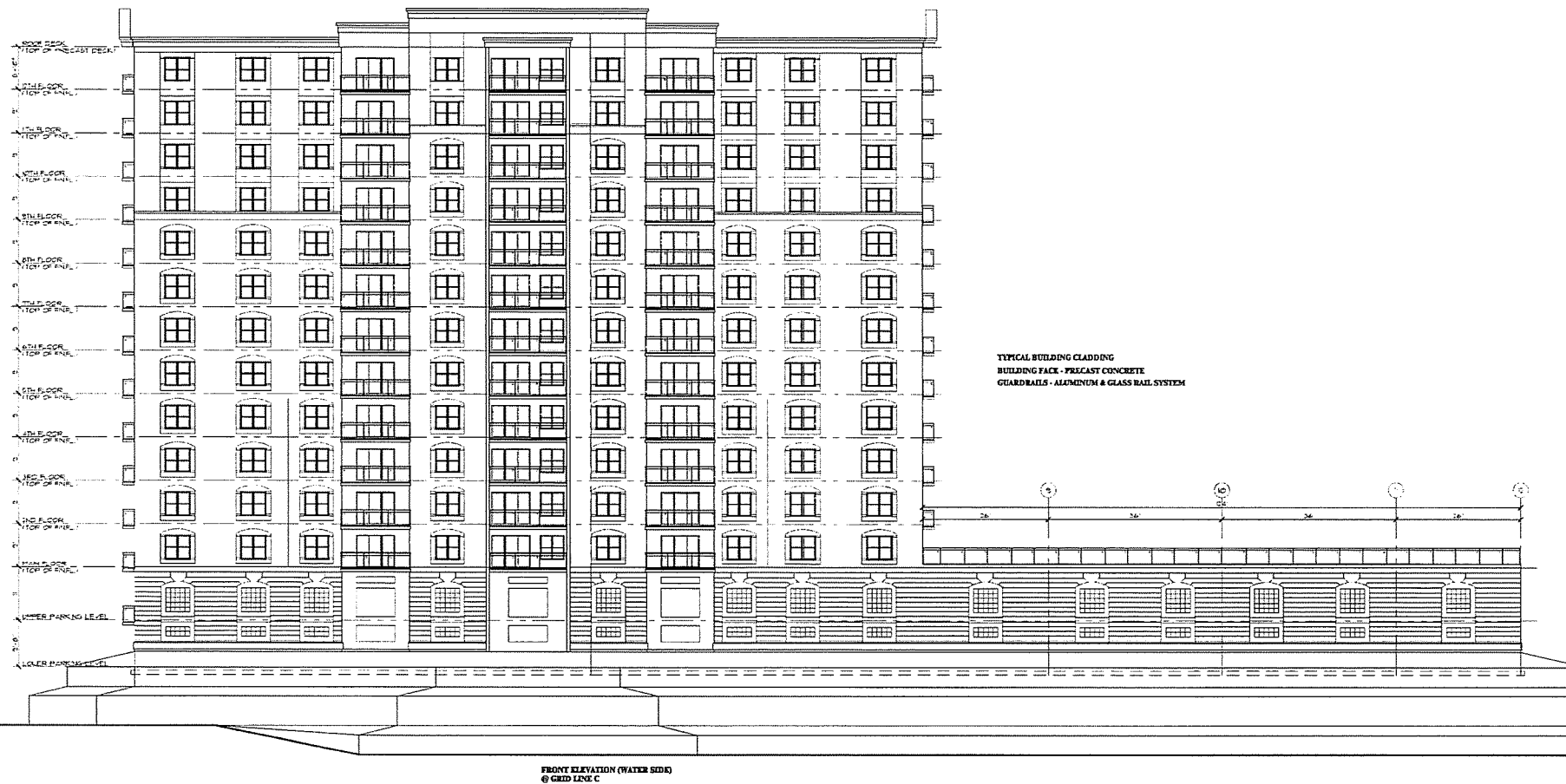
)
)
)
) **HALIFAX REGIONAL MUNICIPALITY**
)
) Per: _____
) MAYOR
)
) Per: _____
) MUNICIPAL CLERK



Schedule B Site Plan

HRM does not guarantee the accuracy of any base information on this Schedule.

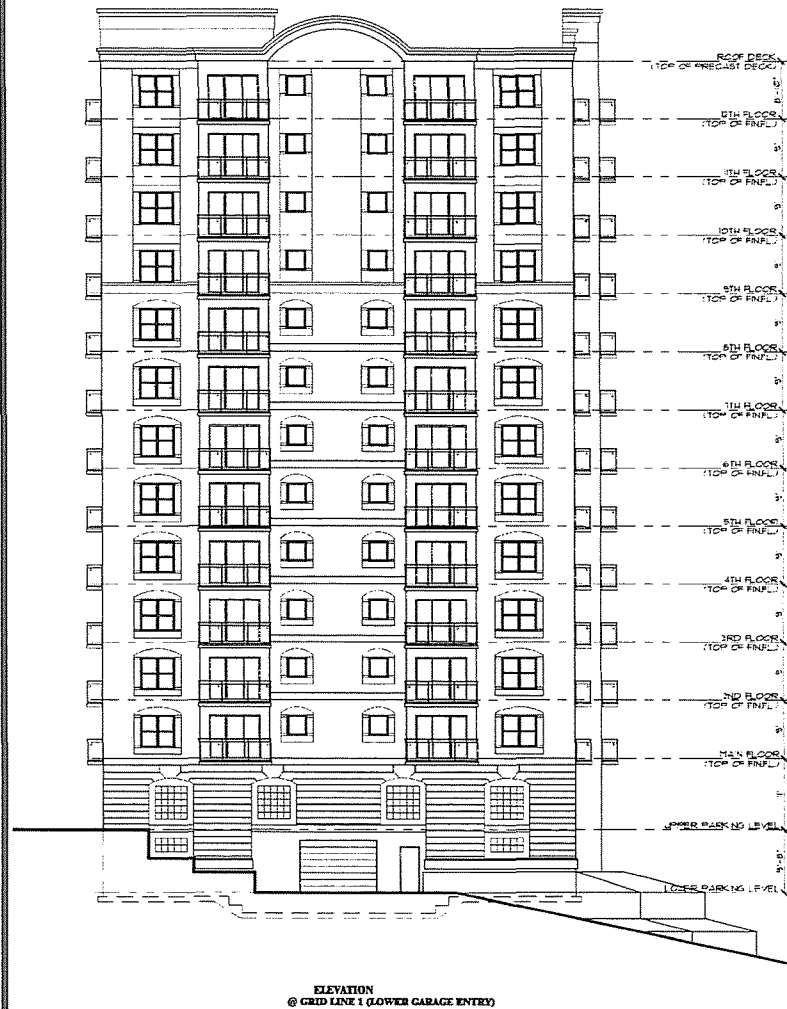




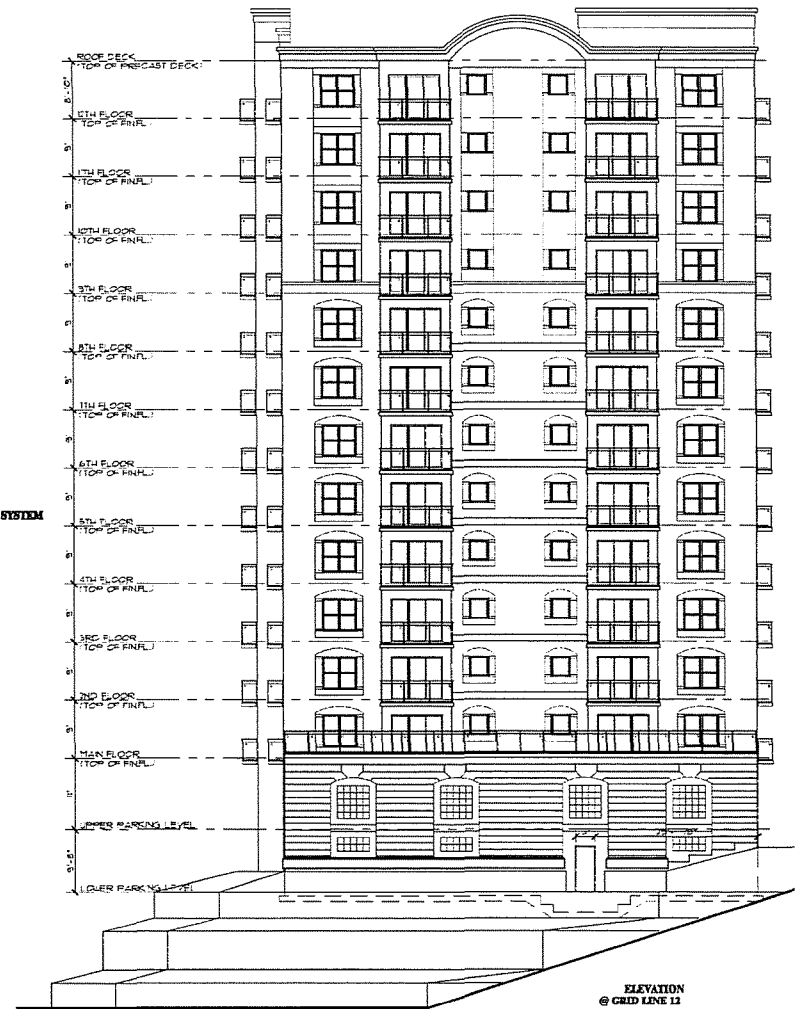
Schedule E West Elevation (Harbour Side)

HRM does not guarantee the accuracy of any base information on this Schedule.

North Elevation



South Elevation

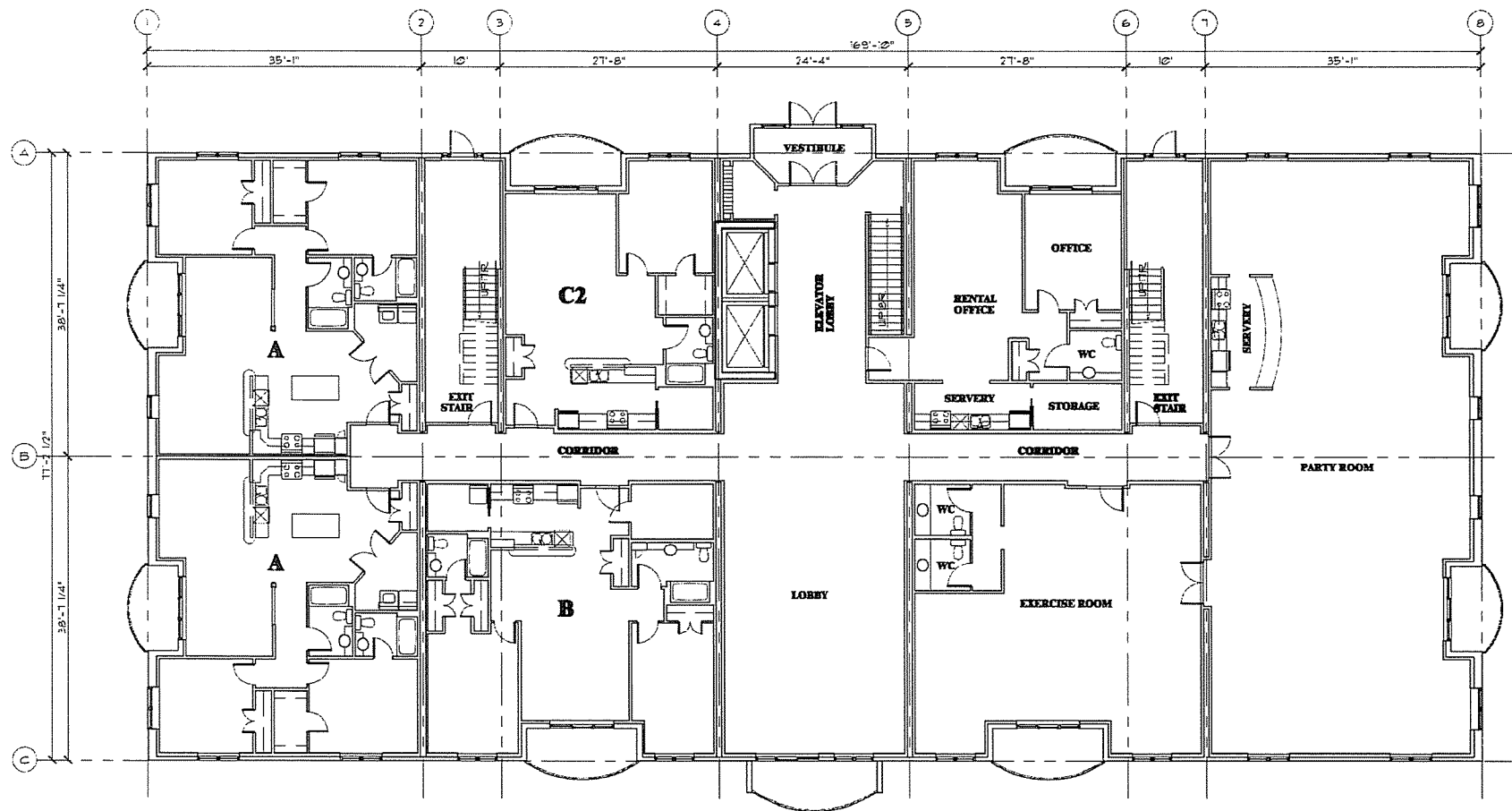


TYPICAL BUILDING CLADDING
BUILDING FACE - PRECAST CONCRETE
GUARDRAILS - ALUMINUM & GLASS RAIL SYSTEM

Schedule F North and South Elevations

HRM does not guarantee the accuracy of any base information on this Schedule.

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



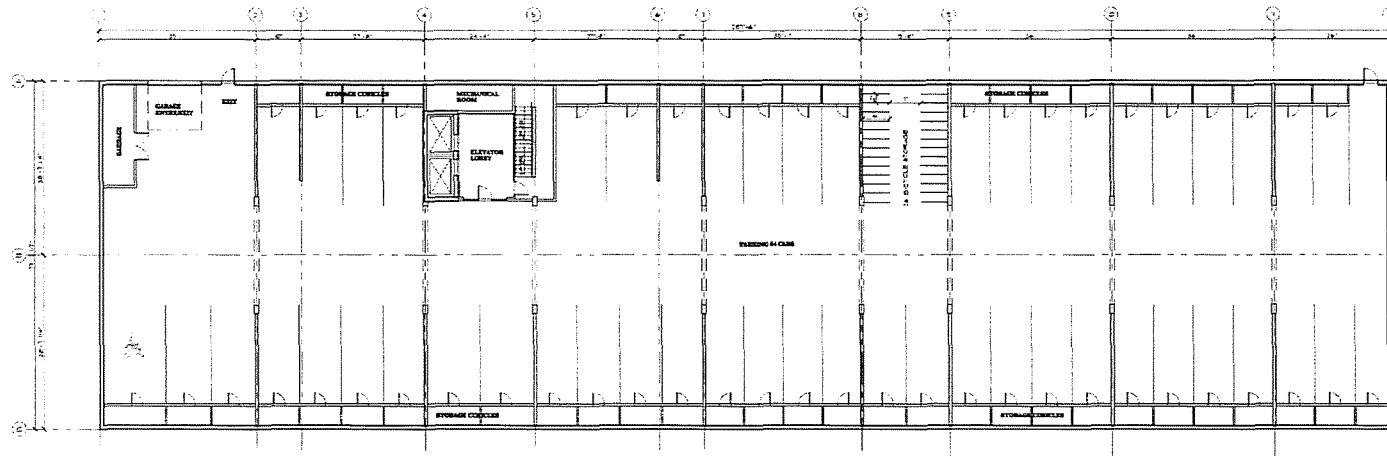
UNIT COUNT		
UNIT TYPE "A"	2 BEDROOM	4 UNITS (per flr.) X 12 FLRS. = 48 UNITS
UNIT TYPE "B"	2 BEDROOM	2 UNITS (per flr.) X 13 FLRS. = 26 UNITS
UNIT TYPE "C"	2 BEDROOM	2 UNITS (per flr.) X 11 FLRS. = 22 UNITS
UNIT TYPE "C1"	1 BEDROOM	1 UNITS (per flr.) X 12 FLRS. = 12 UNITS
UNIT TYPE "C2"	1 BEDROOM	2 UNITS (per flr.) X 1 FLRS. = 2 UNITS
		<u>9 UNITS (per flr.) = 100 UNITS</u>
		<u>minus 5 (units) Amenity = 143 UNITS</u>

MAIN FLOOR PLAN

BLDG. FOOTPRINT	12,774 sq.ft.
UNIT TYPE "A"	1156 sq.ft.
UNIT TYPE "B"	1173 sq.ft.
UNIT TYPE "C"	995 sq.ft.
UNIT TYPE "C1"	784 sq.ft.
UNIT TYPE "C2"	832 sq.ft.

Schedule G Main Floor Plan Layout

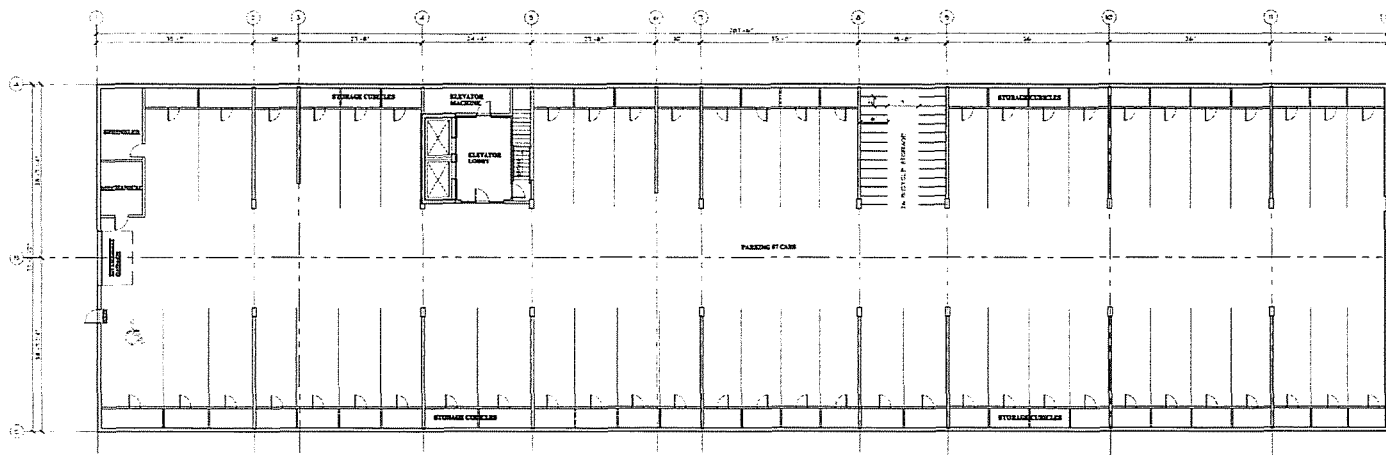
HRM does not guarantee the accuracy of any base information on this Schedule.



51 Automobile
26 Bicycle

Upper Level Parking

PARKING GARAGE P1 (UPPER LEVEL)
BLDG FOOTPRINT 51,377 sq. ft.



55 Automobile
26 Bicycle

Lower Level Parking

PARKING GARAGE P1 (LOWER LEVEL)
BLDG FOOTPRINT 51,377 sq. ft.

Schedule H Internal Parking Plan

HRM does not guarantee the accuracy of any base information on this Schedule.