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Item No. 10.1.5
Halifax and West Community Council
June 24, 2015

TO: Chair and Members of the Halifax and West Community Council
Original Signed

SUBMITTED BY: _____
Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: June 1, 2015

SUBJECT: Case 19311: Development Agreement, 2287 Prospect Rd, Hatchet Lake

ORIGIN

Application by Innovation Architects Ltd.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give Notice of Motion to consider the proposed development agreement, as contained in Attachment A of this report, to allow for a commercial building which exceeds 10% of the lot area at 2287 Prospect Road, Hatchet Lake, and schedule public hearing;
2. Approve the proposed development agreement as contained in Attachment A of this report; and
3. Require that the development agreement be signed by the property owner within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval of said agreement by Community Council and any other bodies as necessary, whichever is later, including applicable appeal periods; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

An application has been submitted by Innovation Architects to enable the development of a single storey 10,059 square foot commercial building at 2287 Prospect Road (see Maps 1 & 2). The proposed building footprint covers approximately 12% of the lot, which exceeds the requirement in the Planning District 4 Land Use By-law (LUB) that a building cover a maximum of 10% of the lot area. However, the Planning District 4 Municipal Planning Strategy (MPS) includes policies to allow the consideration of larger commercial buildings through a development agreement.

Location, Surrounding Area

The subject property is:

- located on Prospect Road in Hatchet Lake;
- 7,648.5 square metres (82,328 square feet) in area and has 71.6 metres (235 feet) of frontage on Prospect Road;
- developed with a 178 square metres (1,920 square foot) commercial building used as a physiotherapy clinic, which covers approximately 2% of the site;
- abutting a drug store and medical office to the north and a vacant commercial property to the south; and
- in close proximity to the Brookside Junior High School and Prospect Road Community Centre.

Designation and Zoning

The subject property is:

- designated Residential B under the MPS (Map 1); and
- zoned C-2 (General Business) Zone under the LUB (Map 2).

Enabling Policy and Zoning Context

The C-2 (General Business) Zone permits a range of commercial uses, but limits the size of a commercial building to a maximum footprint of 10% of the lot area. The applicant has applied for a development agreement to allow for the construction of an addition to the existing commercial building that would exceed the 10% requirement. Policy RB-10 of the MPS allows for the consideration of buildings that cover more than 10% of the lot area through the development agreement process (Attachment B). Criteria within policy RB-10, places an emphasis on the design of the building and compatibility with neighbouring uses.

Proposal

The subject property is currently developed with a 178 square metre 1,920 sq.ft. commercial building used as a physiotherapy clinic. The applicant is proposing to develop 756 square metres (8,139 sq.ft) addition for the physiotherapy clinic and future commercial occupancies. The proposed addition is the form of a single storey building. Other features of the proposed development include:

- a relocated single driveway access to the property; and
- landscaping along the street frontage and throughout the property.

DISCUSSION

Staff has reviewed the proposal against all relevant policies and advise that it is consistent with the MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies. The following outlines matters that are addressed in the proposed development agreement which have been identified for more detailed discussion.

Design and Scale

Policy RB-10 calls for the consideration of architectural design and scale compatible with nearby land uses. The subject property is located in a small commercial node along Prospect Road. Although the neighbouring building at 2273 Prospect Road has a flat roof, structures with pitched roof forms and roof articulation are commonly found along Prospect Road. To recognize this common design approach, the proposed development agreement requires the commercial building to be constructed with pitched roof

forms and roof articulation. With respect to building mass, the façade of proposed building facing the street is quite long. As such the proposed development agreement requires the building's mass to be broken up with use of different building materials. The curved shape of the proposed building will further break up the massing.

The proposed development agreement also requires landscaping on the property with a mixture of trees and shrubs along the front property line and planter boxes along the walkway in front of the building.

Traffic and Site Access

This application was reviewed by Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) and it was determined that the proposed development would have minimal traffic impact on Prospect Road. However, NSTIR's review noted that the existing driveway on the subject property must be relocated to provide safer access and egress to the property. As such, the proposed development agreement requires the driveway to be relocated to the centre of the property prior to the issuance of a construction permit.

Conclusion

Staff advise that the proposed development is reasonably consistent with the applicable policies of the MPS (Attachment B). The development includes architectural features to reinforce the character of the area, landscaping to improve the aesthetic of the property, improved access and pedestrian circulation. As such, it is recommended that Halifax and West Community Council approve the proposed development agreement presented as Attachment A.

FINANCIAL IMPLICATIONS

There are no financial implications. The Applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Development Agreement. The administration of the Development Agreement can be carried out within the approved 2015/16 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 notices posted on the HRM website and mailed to property owners and residents within the notification area as shown on Map 2.

A public hearing must be held by Halifax and West Community Council before they can consider approval of the proposed development agreement. Should Halifax and West Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will continue to be notified as shown on Map 2. The HRM website will also be updated to indicate notice of the public hearing.

The proposed development agreement will potentially impact the following stakeholders: local residents, and business.

ENVIRONMENTAL IMPLICATIONS

No additional concerns have been identified beyond those raised in this report.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant, the preparation of a supplementary staff report and an additional public hearing. A decision of Community Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons why the agreement is not reasonably consistent with MPS policies. A decision of Council to refuse the proposed LUB amendment or development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the HRM Charter.

ATTACHMENTS

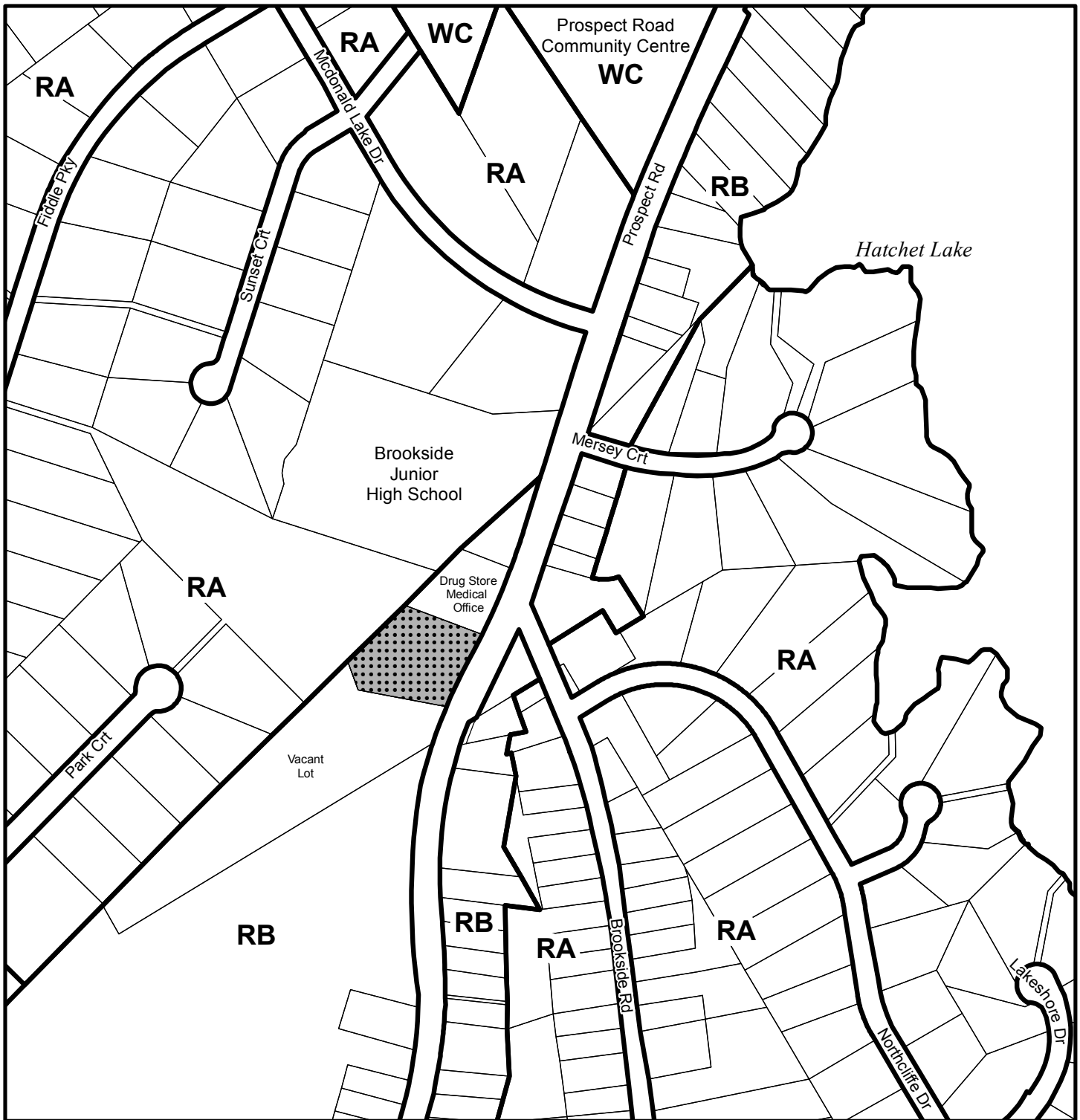
Map 1	Generalized Future Land Use Map
Map 2	Zoning and Notification Map
Attachment A	Proposed Development Agreement
Attachment B	Review of Relevant Policies of the Planning District 4 Municipal Planning Strategy

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Jillian MacLellan, Planner, Development Approvals, 902-490-4423

Original Signed

Report Approved by: _____
Kelly Denty, Manager of Development Approvals, 902-490-4800



Map 1 - Generalized Future Land Use

2287 Prospect Road
Hatchet Lake

HALIFAX



Area of proposed
development agreement

Designation

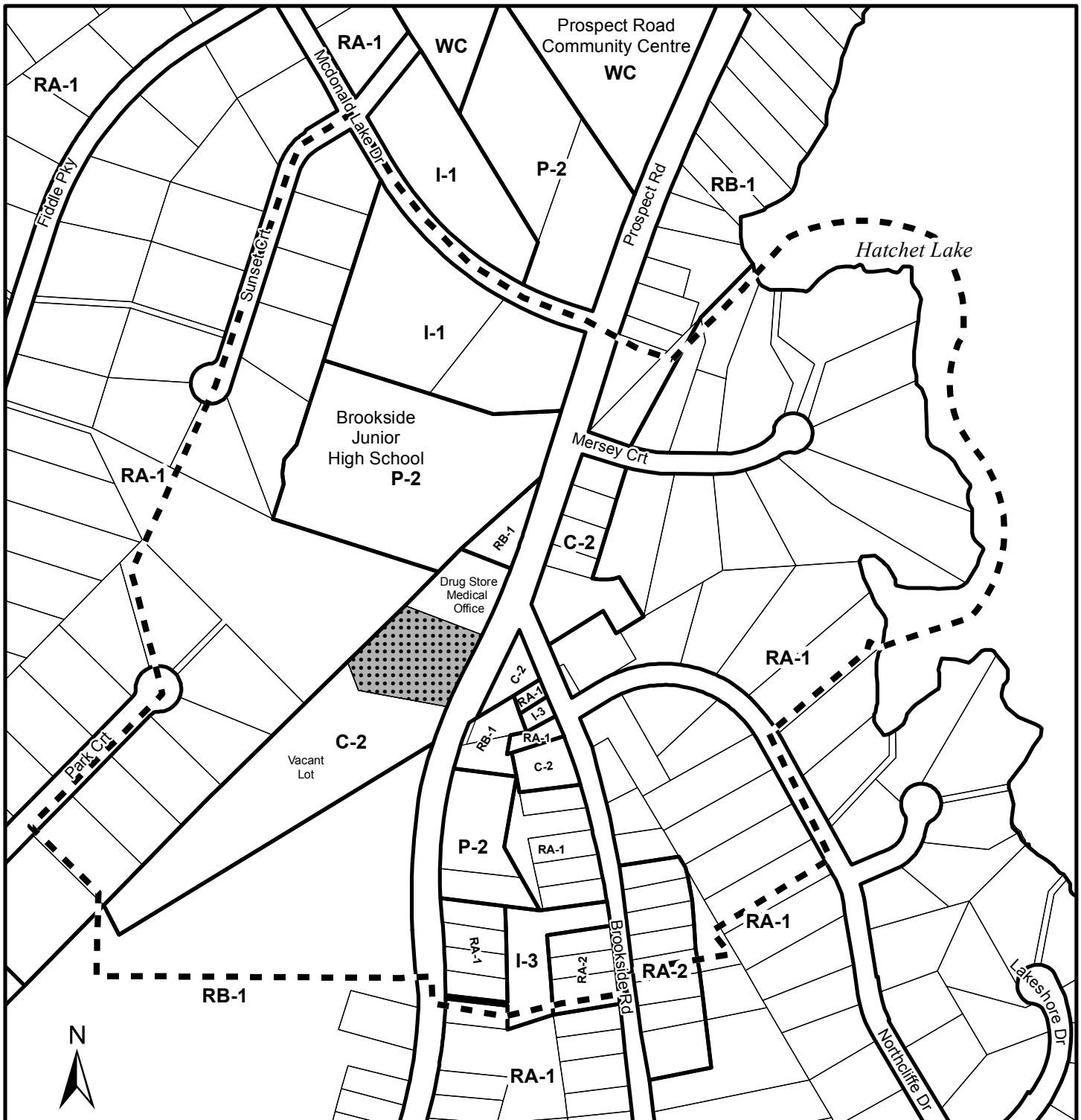
RA Residential A
RB Residential B
WC Western Common

0 40 80 120 160 m

This map is an unofficial reproduction of
a portion of the Generalized Future Land
Use Map for the plan area indicated.


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


Planning District 4
(Prospect) Plan Area



Map 2 - Zoning and Notification

2287 Prospect Road
Hatchet Lake

 Area of proposed development agreement

 Area of notification

Planning District 4
(Prospect) Land Use By-Law Area

Zone

RA-1	Residential A-1
RA-2	Residential A-2
RB-1	Residential B-1
C-2	General Business
P-2	Community Facility
I-1	Light Industry
I-3	Local Service
WC	Western Common

HALIFAX

0 40 80 120 160 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.

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, subdivision and use of the Lands shall comply with the requirements of the Planning District 4 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

1.3.1 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 and/or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality 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 or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 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.

1.4.2 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 laws, by-laws, regulations and codes applicable to the 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 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law

and Regional Subdivision By-law.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is in conformance with the following Schedules attached to this Agreement:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan and Landscape Plan
Schedule C	Elevations

3.2 Requirements Prior to Approval

3.2.1 Prior to the commencement of any site work on the Lands, the Developer shall provide the following to the Development Officer:

- (a) A detailed Site Disturbance Plan prepared by a Professional Engineer in accordance with Section 5.1.1 (a) of this Agreement;
- (b) A detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with Section 5.1.1 (b) of this Agreement; and
- (c) A detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer in accordance with Section 5.1.1 (c) of this Agreement.

3.2.2 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer as per the terms of this Agreement:

- (a) A detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.7 of this Agreement;
- (b) Nova Scotia Department of Transportation and Infrastructure approval of the site access in accordance with Section 4.1 of this Agreement;
- (c) Nova Scotia Environment approval of on-site sewage treatment facilities in accordance with Section 4.2 of this Agreement; and
- (d) Nova Scotia Department of Transportation and Infrastructure approval of the Stormwater Management Plan in accordance with Section 5.1.1 (c) of this Agreement.

3.2.3 Upon the issuance of the Occupancy Permit for the proposed addition, the Developer shall provide the following to the Development Officer:

- (a) Certification from a member in good standing of the Canadian Society of Landscape Architects indicating that the Developer has complied with the landscaping provisions of this Agreement, or the posting of security in accordance with Sections 3.7.10 and 3.7.11 respectively.

3.3 General Description of Land Use

The use(s) of the Lands permitted by this Agreement are any commercial use permitted within the C-2 (General Business) Zone of the Planning District 4 Land Use Bylaw as amended from time to time.

3.4 Building Siting, Massing and Scale

3.4.1 The building shall be as substantially constructed as shown on the Schedules.

3.4.2 Notwithstanding 3.4.1, the building footprint as shown on Schedule B may be increased by five percent (5%) provided that all other provisions of this Agreement have been adhered to.

3.4.3 Exterior building materials shall be as generally shown on Schedule C. Building materials may be

changed to any of the building materials listed below as long as two or more building materials are incorporated into the design:

- (a) brick;
- (b) concrete split face masonry;
- (c) hardi board siding or equivalent;
- (d) stone masonry;
- (e) horizontal clapboard stained wood siding; and
- (f) metal siding;

- 3.4.4 Any exposed foundation in excess of 1 metre (3 feet) shall be architecturally detailed, veneered with stone or brick, painted, stucco, or an equivalent.
- 3.4.5 Each commercial occupancy shall have its own separate entrance from the front of the building. Changes to the location of each entrance, as shown on the schedules, is permitted to accommodate this as determined by the Development Officer.
- 3.4.6 Each building entrance shall be accentuated through the use architectural detailing, such as but not limited to, canopies, building recesses, changes in material or changes in building material colour.
- 3.4.7 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements associated with new development or alterations to the existing building shall be treated as integral parts of the design. Where appropriate these elements shall be painted to complement the colour of the adjacent surface, except where used expressly as an accent.
- 3.4.8 Unenclosed structures attached to the main building such as decks, steps and mobility disabled ramps shall be permitted.
- 3.4.9 The main building on the Lands shall be designed such that the mechanical systems (HVAC, etc.) are not visible from the Prospect Road. Furthermore, no mechanical systems shall be located between the main building and the abutting properties unless screened as an integral part of the building design and noise reduction measures are implemented.

3.5 Accessory Buildings

One accessory building shall be permitted on the Lands. The accessory building shall be:

- (a) located in the rear yard;
- (b) a maximum of 46.5 square metres (500 square feet) in area;
- (c) a maximum of 3 metres (10 feet) in height;
- (d) a minimum of 3 metres (10 feet) from any property line; and
- (e) a minimum of 3 metres (10 feet) from the main building.

3.6 Parking, Circulation and Access

- 3.6.1 The layout of the internal driveway system, circulation aisles and parking areas on the Lands shall be in conformance with Schedule B.
- 3.6.2 The parking areas shall provide a minimum of 26 parking spaces.
- 3.6.3 All parking areas, driveways and circulation aisles on the Lands shall have a finished hard surface such as asphalt, concrete, paving stones, interlocking paving stones, or an acceptable equivalent in the opinion of the Development Officer.

3.7 Landscaping

- 3.7.1 Prior to the issuance of a Development Permit, the Developer agrees to provide a detailed Landscape Plan which shall provide details of all landscaped areas shown on Schedule B. The Developer may provide additional plantings and landscaping features than shown on Schedule B. The Landscape Plan shall be prepared by a Landscape Architect, who shall be a member in good standing with the Canadian Society of Landscape Architects, and comply with all provisions of this

section.

- 3.7.2 Landscaping required by Section 3.7.1 shall maintain as much of the natural landscape and vegetation as can be reasonably achieved as determined by a Landscape Architect. Further the plan shall include the following:
- (a) A 5 metres (16.4 feet) wide landscaping strip along the public street frontage, exclusive of driveways. The landscape strip shall be sodded and include a minimum of one (1) tree and three (3) shrubs per 12.2 metres (40 feet) of street frontage. The incorporation of trees and shrubs into the landscaped strip may be provided in the form of groupings, provided a minimum ratio of one (1) tree and three (3) shrubs are provided per 12.2 metres (40 feet) of street frontage; and
 - (b) A minimum of 2 planter boxes located along the walkway in front of the building.
- 3.7.3 Planting details for each type of plant material proposed on the detailed Landscape Plan shall be provided, including a species list with quantities, size of material, and common and botanical names (species and variety).
- 3.7.4 Plant material shall be primarily comprised of native species and conform to the Canadian Nursery Trades Association's Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.7.5 Construction Details for all tree protection hoarding, benches, light standards and luminaries, trash receptacles, bike racks, tree grates and guards, planter seating wall, wood arbour, outdoor garbage enclosure, railings, and fencing shall be provided to the Development Officer with the Landscape Plan.
- 3.7.6 Deciduous trees shall be a minimum of 45 mm caliper in size. Coniferous trees shall be a minimum of 1.5 m high and upright shrubs shall be a minimum height or spread of 60 cm.
- 3.7.7 All pedestrian walkways shall have a finished hard surface such as poured in place concrete, interlocking paving stones, or an acceptable equivalent in the opinion of the Development Officer. However, pedestrian walkways shall not be finished with asphalt.
- 3.7.8 Shrub material shall be used to screen any electrical transformers or other utility boxes.
- 3.7.9 All disturbed areas shall be reinstated to original condition or better.
- 3.7.10 Upon the issuance of an Occupancy Permit 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.
- 3.7.11 Notwithstanding Section 3.7.10, the Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape works and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. 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.

3.8 Retaining Walls

- 3.8.1 Retaining walls are not a requirement under this Agreement, but any that are proposed shall be

identified on the Detailed Landscape Plan, including the height and type of fencing that may be proposed in conjunction with it.

3.8.2 Any proposed retaining wall(s) shall be constructed of a decorative precast concrete or modular stone retaining wall system or equivalent as approved by the Development Officer.

3.8.3 A construction detail of any proposed retaining wall(s), or retaining wall and fence combination(s), shall be provided and certified by a Professional Engineer.

3.9 Signage

3.9.1 Signage shall be subject to the requirements of the Land Use By-law for Planning District 4, except that regarding ground signage.

3.9.2 Further subsection 3.8.1, the following requirements will apply to ground signs in addition to the requirements of the Land Use By-law for Planning District 4:

- (a) a maximum of 1 ground signs shall be permitted on the Lands;
- (b) landscaping, exclusive of landscaping required by Section 3.6 of this Agreement, shall be provided around the base of each ground sign; and
- (c) no ground sign shall be permitted within 5 metres (16.4 feet) of the front property line and shall be subject to approval for Nova Scotia Transportation and Infrastructure Renewal.

3.10 Outdoor Storage

3.10.1 No outdoor storage shall be permitted on the Lands except for refuse, recycling, and composting materials.

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

3.11 Solid Waste Facilities

3.11.1 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street. Such building or containers are not permitted in the front yard of the property. Further, consideration shall be given to locating all refuse and recycling material to ensure minimal effect on abutting property owners by means of opaque fencing or masonry walls or suitable landscaping.

3.11.2 Notwithstanding Section 3.11.1 of this Agreement, small waste receptacles are permitted throughout the development and are to be considered as part of the landscaping for the development.

3.11.3 The designated spaces for source separation services shall be shown on either the building plans or the site plan and shall conform with By-law S-600 (Solid Waste Collection & Disposal).

3.12 Outdoor Lighting

Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways, shall be arranged so as to divert the light away from streets, adjacent lots and buildings and shall be of a full cut-off design.

3.13 Temporary Construction Structure

A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction of the development in accordance with this Agreement. The temporary structure shall be located no less than ten (10) feet from any watercourse buffer required by the Land Use By-law and shall be removed from the Lands upon the issuance of the Occupancy Permit.

3.14 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building(s), 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/sanding of walkways and driveways.

3.15 Deliveries and Collection on the Lands

Deliveries to the Lands, and the collection of refuse, recycling, and composting materials, shall only occur between the hours of 7:00 am and 8:00 pm.

PART 4: STREETS AND SERVICES

4.1 Off Site Disturbance

Prior to the issuance of a Development Permit, the Developer agrees to provide to the Development Officer a "Work Within Highway Right-of-Way Permit" approved by Nova Scotia Transportation and Infrastructure Renewal to relocate the driveway access as per Schedule B. Any disturbance to existing off site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by Nova Scotia Transportation and Infrastructure Renewal.

4.2 On Site Sewage System

The Lands shall be serviced through privately owned and operated on-site sewage disposal systems and treatment facilities. The Developer agrees to have prepared by a qualified professional and submitted to the Municipality and Nova Scotia Environment, a design for all private sewage disposal system(s). No Construction Permit shall be issued prior to the Development Officer receiving a copy of all permits, licences, and approvals required by Nova Scotia Environment respecting the design, installation, construction of on site sewage systems and treatment facilities.

4.3 On-Site Water System

The Lands shall be serviced through a privately owned and operated on-site water distribution system.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plans

5.1.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:

- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
- (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other sections of this Agreement, no work is permitted on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and
- (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management

Plan prepared by a Professional Engineer.

5.2 Stormwater Management System

- 5.2.1 The Developer agrees to construct, at their own expense, the Stormwater Management System for the development which conforms to the design submitted to the Development Officer and reviewed by the Nova Scotia Transportation and Infrastructure Renewal. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.
- 5.2.2 The Developer agrees, at its own expense, to maintain in good order all stormwater facilities on the Lands.

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 Municipality's Development Engineer to ensure compliance with the environmental protection measures.

PART 6: AMENDMENTS

6.1 Substantive Amendments

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and shall only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

6.2 Non-Substantive Amendments

The following items are considered by both Parties to be not substantive and may be amended by resolution of Council:

- (a) Changes to the requirements of the main building as detailed in the Schedules and as identified in Section 3.4 of this Agreement;
- (b) Changes to the requirements for the accessory building as identified in Section 3.5 of this Agreement;
- (c) Changes to the landscaping measures as outlined in Section 3.7 of this Agreement;
- (d) The granting of an extension to the date of commencement of development, as identified under Section 7.3 of the Agreement; and
- (e) The granting of an extension to the length of time for the completion of the development, as identified under Section 7.4 of the Agreement;

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia and the Developer shall incur all costs in recording such documents.

7.2 Subsequent Owners

- 7.2.1 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 Council.
- 7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

7.3 Commencement of Development

- 7.3.1 In the event that development on the Lands has not commenced within three years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, 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.
- 7.3.2 For the purpose of this Agreement, commencement of development shall mean the installation of the concrete slab for the addition as shown on Schedule B.
- 7.3.3 Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.2, if the Municipality receives a written request from the Developer prior to the expiry of the commencement of development time period.

7.4 Completion of Development

Upon the completion of the development or portions thereof, or after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new agreement; or
- (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 Planning District 4, as may be amended from time to time.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

The Developer agrees 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 to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

8.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (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 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 the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other

remediation under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

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

SIGNED, SEALED AND DELIVERED in the presence of:

=====

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

[INSERT PROPERTY OWNER]

Per: _____

Per: _____

=====

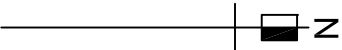
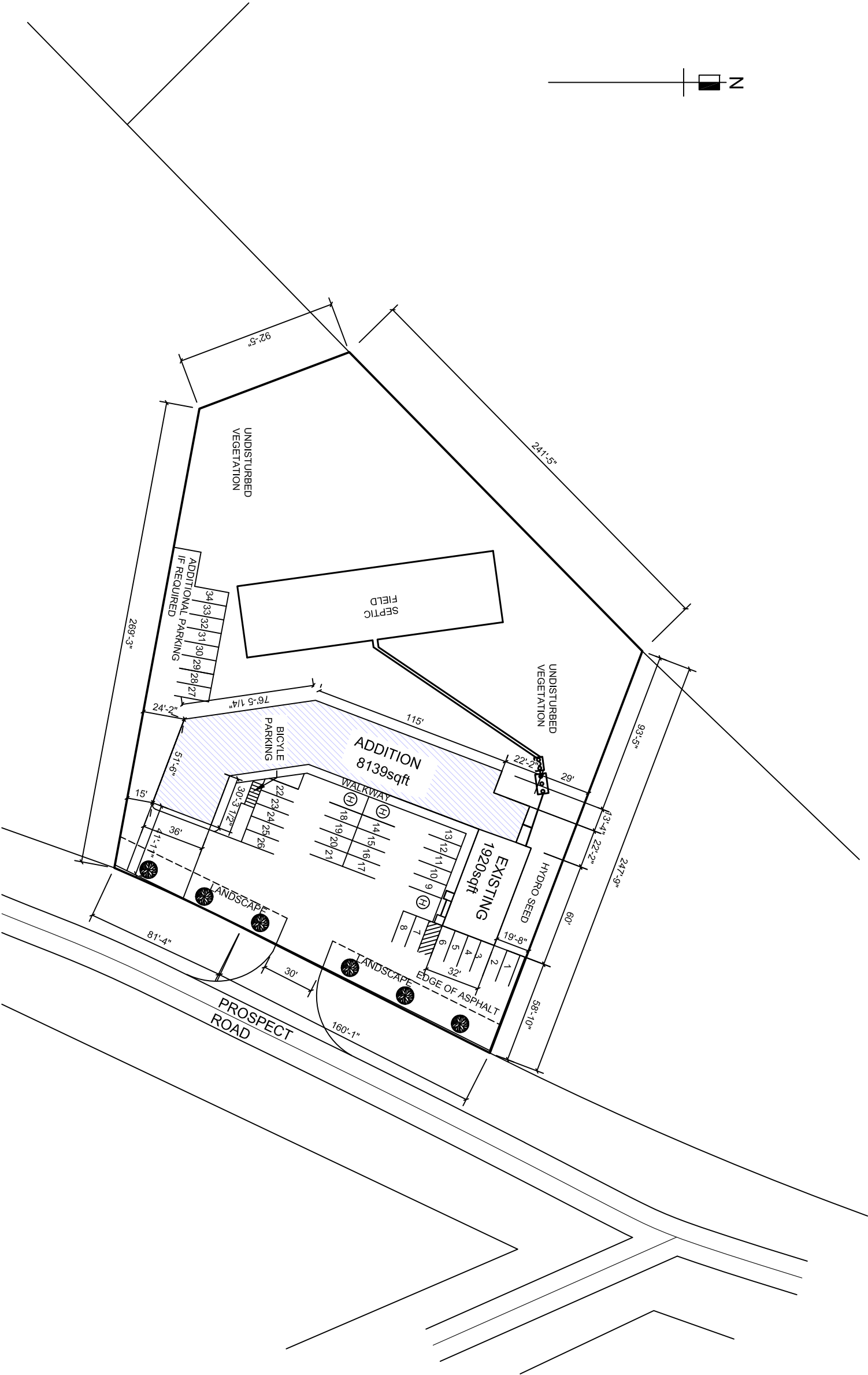
HALIFAX REGIONAL MUNICIPALITY

Per: _____

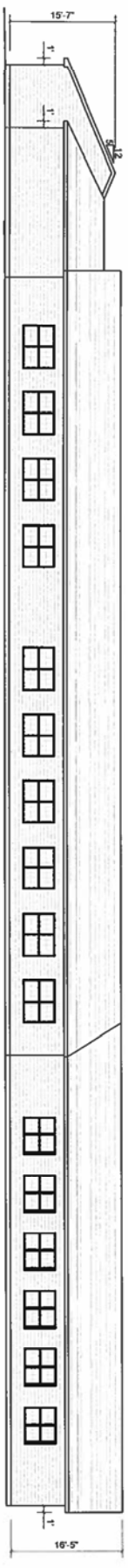
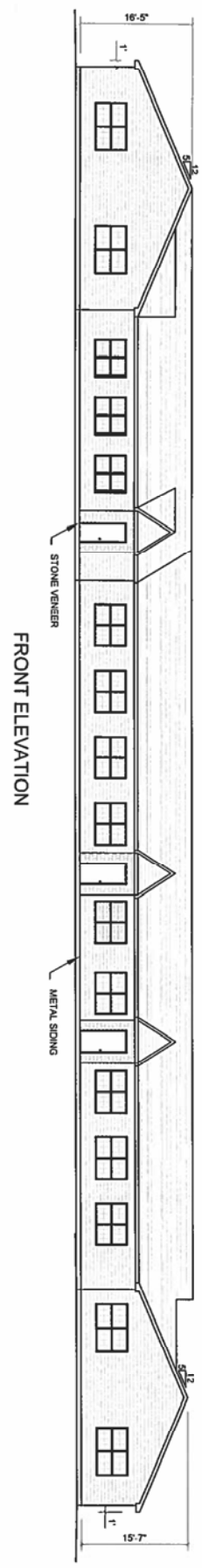
Mayor

Per: _____

Municipal Clerk



PROJECT: CLASSIC THERAPY	DRAWN: BEA FEIDAK	CHECKED:	INNOVATION ARCHITECTS					
TITLE: SITE PLAN	DATE: MAR. 26, 2013	APPROVED:						
DWG. NO. A-100	SCALE: 1/8" = 1'	PROJECT NO.						
			REVISIONS			TEL: 832-9400 FAX: 445-2634 CELL: 209-1101		
			DEC. 12, 2014	FOR REVIEW	04			
			JULY. 16, 2014	FOR REVIEW	03			
			AUG. 30, 2013	FOR REVIEW	02			
			AUG. 14, 2013	FOR REVIEW	01			
			DATE	DESCRIPTION	NO.			



REAR ELEVATION

PROJECT: CLASSIC THERAPY	DRAWN: BEA FEDER	CHECKED: KJ GANDHI	REVISIONS			INNOVATION ARCHITECTS
TITLE: FRONT AND REAR ELEVATIONS	DATE: FEB. 5, 2014	APPROVED: KJ GANDHI	JULY 18, 2014	FOR REVIEW	03	
			AUG. 30, 2013	FOR REVIEW	02	
			AUG. 14, 2013	FOR REVIEW	01	
			DATE	DESCRIPTION	NO	
DWG. NO. A-201	SCALE: 1/16"=1'	PROJECT NO.				TEL: 832-9400 FAX: 445-2634 CELL: 209-1101

**Attachment B: Review of Relevant Policies of the
Planning District 4 Municipal Planning**

RB-10 Notwithstanding Policy RB-2 or Policy RB-4, within the Residential B Designation, Council may consider permitting uses permitted in the general business zone, which are in excess of ten (10) percent of lot area, service stations, motels and entertainment uses in accordance with the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:

Policy Criteria	Staff Comments
(a) that the architectural design (external appearance) and scale of any structures are compatible with nearby land uses;	<p>Structures with pitched roof forms and roof articulation are also commonly found along Prospect Road. To recognize this common design approach, the proposed development agreement requires each commercial building to be constructed with pitched roof forms and roof articulation.</p> <p>With respect to building scale, the proposed development is 2% larger than what would be permitted under the requirements of the Land Use By-law. However, the proposed development agreement does require architectural design and change in building material to break up the massing of the building.</p>
(b) that adequate separation distances are maintained from low density residential developments;	The subject property is not adjacent to any low density residential properties.
(c) the provision of landscaping and screening from any adjacent residential development;	The subject property is not adjacent to any low density residential properties, however, landscaping is required along the frontage of the property.
(d) the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety;	A traffic impact statement was not required for this application as determined by Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR). However, as part of the review of this application NSTIR has required that the existing driveway be moved closer to the centre of the property to provide safer access to and egress from the site. This change is reflected in the proposed development agreement.
(e) the means by which solid and liquid waste will be treated;	<p>The proposed development agreement requires solid waste to be stored either in the main building or in a separate building which is screened from Prospect Road.</p> <p>Further, the development is subject to By-law S-600 (Solid Waste Collection & Disposal), which requires multi-stream solid waste source separation for commercial establishments.</p> <p>The proposed development agreement requires liquid waste to be treated through a privately owned and operated on-site sanitary system.</p>
(f) the effects of the development on the natural environment and the means for handling	A preliminary stormwater management plan was reviewed and accepted by the Nova Scotia

stormwater runoff;	Department of Transportation and Infrastructure Renewal.
(g) the general maintenance of the development;	The proposed development agreement requires the Developer to maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building(s), fencing, walkways, 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/sanding of walkways and driveways
(h) the hours of operation; and	Due to the commercial nature of the surrounding uses Staff did not find any need to control the hours of operation for any of the permitted uses, however the proposed development agreement does limit the hours of deliveries and garbage collection from 7 am to 8pm.
(i) the provision of Policy IM-11.	See review below.

IM-11 In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, Council shall have appropriate regard to the following matters:

Policy Criteria	Staff Comments
(a) that the proposal is in conformity with the intent of this Planning Strategy and with the requirements of all other municipal by-laws and regulations;	<p>There exists policy support for this type of proposal under the Planning District 4 Municipal Planning Strategy (Policy RB-10). See review of Policy RB-10 above.</p> <p>This proposed development agreement does not supercede the applicability of other by-laws, statutes and regulations, other than the Planning District 4 Land Use By-law to the extent varied by the agreement.</p>
<p>(b) that the proposal is not premature or inappropriate by reason of:</p> <p>(i) the financial capability of the Municipality to absorb any costs relating to the development;</p> <p>(ii) the adequacy of on-site sewerage and water services;</p> <p>(iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;</p> <p>(iv) the adequacy of road networks leading to or within the development; and</p> <p>(v) the potential for damage to or for destruction of designated historic buildings and sites.</p>	<p>(i) This development will not result in additional costs to the Municipality.</p> <p>(ii) The applicant has received approval from Nova Scotia Environment for a septic system to service the proposed development.</p> <p>The applicant provided a well study for the existing use which indicated there was sufficient water on the subject property. Based on the proposed uses staff did not require a ground water assessment.</p> <p>(iii) This development will not increase the demand for schools, recreation or other community facilities in the area.</p> <p>(iv) This application was reviewed by NSTIR and it was determined that Prospect Road was adequate to service this development.</p>

	(v) There are no designated historic buildings or sites in the immediate area.
<p>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</p> <p>(i) type of use;</p> <p>(ii) height, bulk and lot coverage of any proposed building;</p> <p>(iii) traffic generation, access to and egress from the site, and parking;</p> <p>(iv) open storage;</p> <p>(v) signs; and</p> <p>(vi) any other relevant matter of planning concern.</p>	<p>(i) Section 3.3 of the proposed development agreement lists the permitted uses</p> <p>(ii) Sections 3.4 and 3.5 of the proposed development agreement covers height, bulk and lot coverage for both the main building and the accessory building.</p> <p>(iii) Section 3.6 of the proposed development agreement covers parking, circulation and access to and egress from the site.</p> <p>(iv) No outdoor storage will be permitted on the property.</p> <p>(v) Section 3.9 of the proposed development agreement covers signage on the site.</p> <p>(vi) No other relevant matter of a planning concern were identified by staff.</p>
(d) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.	The subject property does have a steep grade, however, the applicant will fill the steep area to allow for the expansion.
(e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-July 2, 2002 / E-August 17, 2002)	The development is to occur on an existing lot fronting on the Prospect Road. No subdivision will be required.