

8.1.2 (ii)



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**REVISED**

**Harbour East Community Council - August 3, 2006**

**TO:**

Harbour East Community Council

**SUBMITTED BY:**

Paul Dunphy, Director of Planning and Development Services

**DATE:**

July 17, 2006

**SUBJECT:**

**Case 00927 - Non Substantive and Substantive Amendments to the Development Agreement for the Home Depot property, 60 Baker Drive, Dartmouth**

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**SUPPLEMENTARY REPORT**

**ORIGIN**

Application by Request by Environmental Design Management Limited, on behalf of Home Depot Canada, Inc. and in conjunction with O'Regan's Automotive Group.

**RECOMMENDATION**

It is recommended that Harbour East Community Council:

- (1) by resolution, approve the Amending Agreement appended as Attachment A of this report detailing the non-substantive amendments to the Development Agreement for the property currently occupied by Home Depot, 60 Baker Drive, as required for the modifications to the architectural design and exterior appearance of the building and the parking and circulation area to accommodate proposed automobile dealership(s) as previously approved by Council on July 10, 2006; and
- (2) require that the Amending Agreement be signed and returned within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.
- (3) approve the substantive amendments to the development agreement as shown in Attachment B to permit modifications to signage and one additional driveway access connecting Baker Drive to Parcel 1, 60 Baker Drive; and
- (4) require that the Amending 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 whichever approval is later, including applicable appeal periods, otherwise, this approval will be void and obligations arising hereunder shall be at an end.

## **DISCUSSION:**

### **Non-substantial Amendment**

On July 10, 2006 Harbour East Community Council approved non substantive amendments to the Home Depot Development Agreement. The intention was to permit modifications to the architectural design and exterior appearance of the building and the parking/circulation areas to accommodate the proposed automobile dealerships. Council's decision needs to be in the form of an amending agreement so that it can be registered in the Registry of Deeds. A copy of the Amending Agreement is attached (Attachment A).

### **Substantial Amendment**

On July 10, 2006, Harbour East Community Council gave Notice of Motion to consider substantive amendments to the Development Agreement (Attachment B). These amendments will permit modifications to signage and an additional driveway access. Afterwards, the applicant asked to retain the existing pylon sign that abuts Highway 111.

Although retaining the pylon sign abutting Highway 111 is not enabled under the draft amending agreement, staff see no reason for it not to be allowed. It is an existing, previously approved sign that serves to provide businesses on Parcel 1 with increased visibility from Highway 111. The change permitting this sign to be retained is highlighted in **bold text** under Section 2.7.2.5 of the Amending Agreement (Attachment B).

## **BUDGET IMPLICATIONS**

No Budget Implications

## **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**

### **Non Substantive Amendments**

1. Approve the proposed Amending Development Agreement (Attachment A) permitting the non substantive amendments by resolution. This is the recommended alternative.
2. Council may choose to reject the proposed Amending Development Agreement (Attachment A) giving specific reasons. Pursuant to Section 230(6) of the Municipal Government Act, Council is required to provide reasons to the applicant justifying this

refusal, based on policies of the MPS. This alternative is not recommended, as the Existing Development Agreement allows for this change. This alternative is not recommended. Should Council reject the application, reasons must be given for the rejection, pursuant to the Municipal Government Act.

### **Substantive Amendments**

1. Approve the proposed Amending Development Agreement (Attachment B) permitting the substantive amendments. This is the staff recommendation.
2. Council could choose to request revisions to the proposed development agreement, in consultation with the proponent. Significant changes to the agreement may necessitate an additional public hearing.
3. Council could choose to reject the application, in which case Council must provide reasons for the refusal based on the policies of the Municipal Planning Strategy pursuant to the Municipal Government Act. This alternative is not recommended, as staff advise the proposed agreement satisfactorily complies with the policies and intent of the MPS.

### **ATTACHMENTS**

- Attachment A: Proposed Non-Substantive Amendment to the Existing Development Agreement
- Attachment B: Revised Development Agreement - Substantive Amendments

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: John MacPherson, Planner, Planning and Development Services 490-5719

**ATTACHMENT A**

THIS AMENDING AGREEMENT made this      day of      , 2006,

BETWEEN:

**THE HOME DEPOT CANADA**  
a body corporate, in the County of Halifax  
("the Developer")

**OF THE FIRST PART**

**HALIFAX REGIONAL MUNICIPALITY**  
a body corporate, in the County of Halifax,  
Province of Nova Scotia ("the Municipality")

**OF THE SECOND PART**

**WHEREAS** the Developer is the registered owner of a parcel of land located on the west side of Baker Drive, Dartmouth, which said parcel of land is more particularly described in Schedule "A" to this Agreement ("the lands");

**AND WHEREAS** the Parties have previously entered into a Development Agreement to allow, in part, the development of a home improvement centre ("Home Depot") on the lands, the said agreement being recorded at the Registry of Deeds at Halifax in Book No. 6530 at Pages 1-48 ("the Existing Agreement");

**AND WHEREAS** Harbour East Community Council approved this request at a meeting held on      , 2006 (referenced as Municipal Case 00927);

**THEREFORE** in consideration of the mutual benefits from the covenants contained herein, the Parties agree as follows:

1. To amend Section 2.1 by adding the following:  
Schedule "B-3"      Site Plan for O'Regan Auto Mall (Parcel 1)  
Schedule "C-2"      Perspective - Dealer Signs (Parcel 1)
2. To replace Section 2.1 Schedule "C" with the following:  
Schedule "C-1"      Elevation Drawings-Signage (Parcel 1)
3. All other terms of the Existing Agreement shall remain in full force and effect.
4. This Amending Agreement and everything contained herein shall be binding upon the Parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set hands and seals to this Amending Agreement on the day and year first above written.

SIGNED, SEALED AND DELIVERED  
in the presence of

Per \_\_\_\_\_

) The Home Depot Canada

)

)

) Per \_\_\_\_\_

)

)

) Per \_\_\_\_\_

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

) Halifax Regional Municipality

)

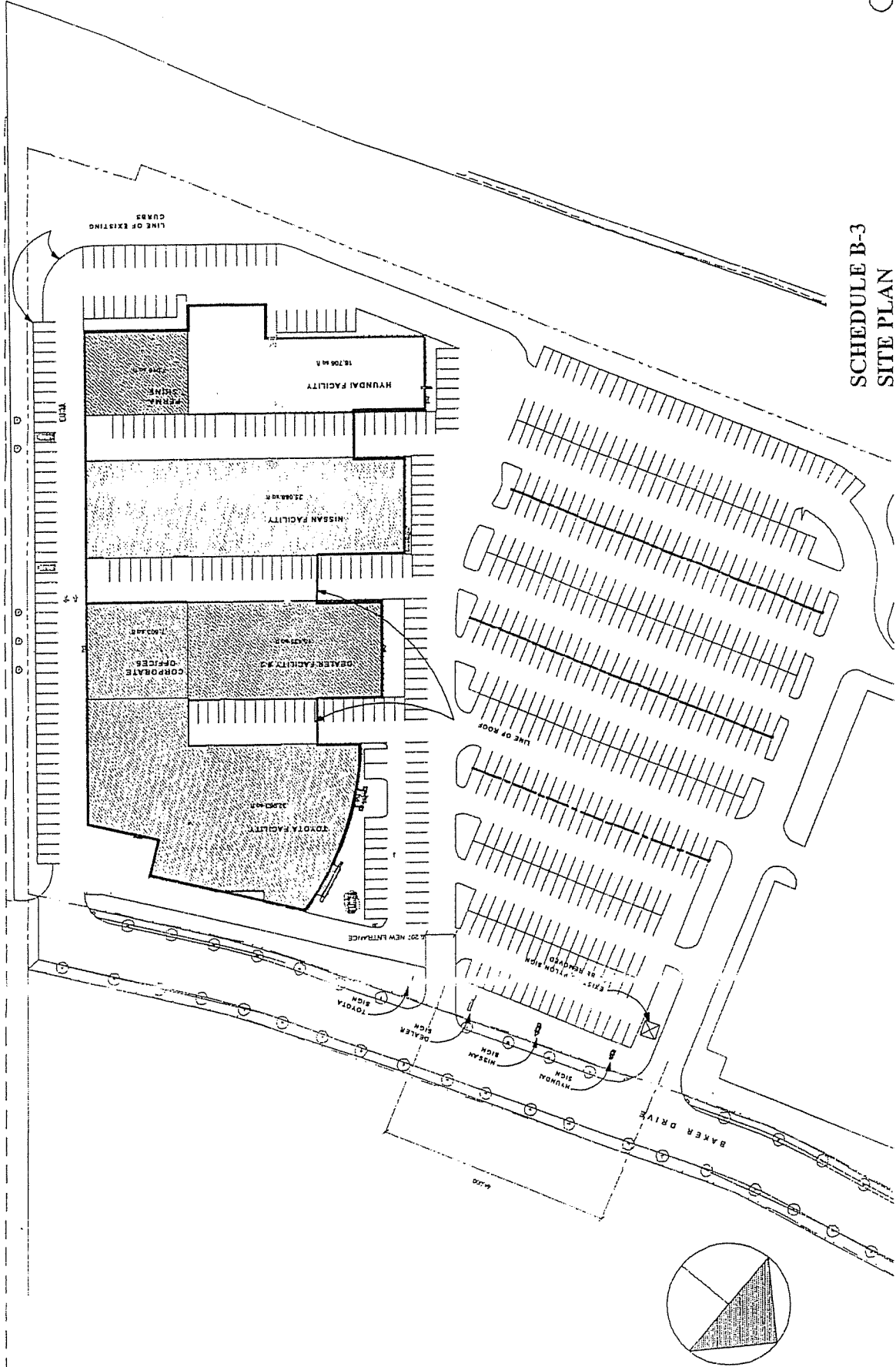
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) Per \_\_\_\_\_

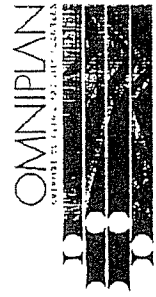
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Mayor

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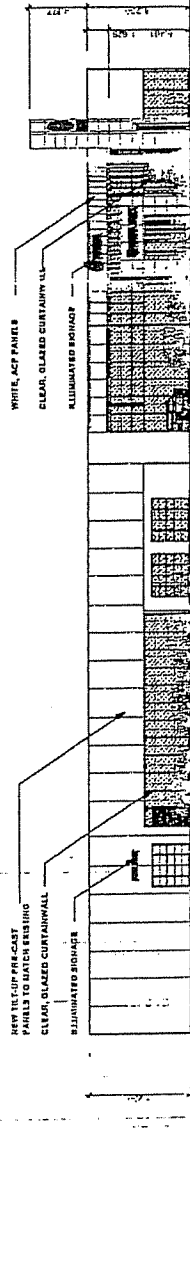


# SCHEDULE B-3 SITE PLAN

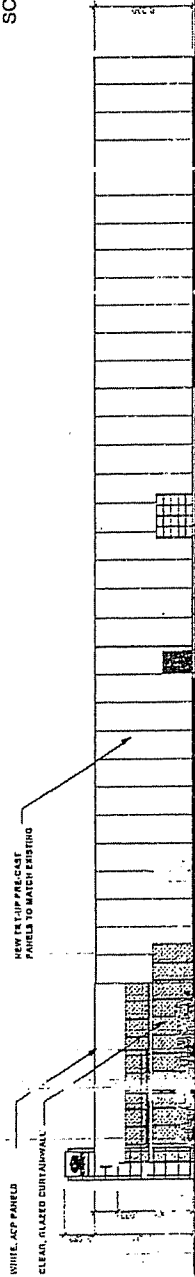


DESIGN COPYRIGHT		TOYOTA IMAGE SYSTEM - DESIGN CONTROL DOCUMENTS		O'REGAN AUTO MALL		
OMNIPLAN Assessment Field Facility Planning 1714 Bayview Rd. W. Suite 200 Vancouver, BC V6L 3H1 Tel: 604-271-1111 Fax: 604-271-1112 www.omniplan.ca	Unpublished Work - Copyright Omniplan 2005. Reproduction or modification without written permission is prohibited. All drawings are the property of Omniplan. No part of this document may be reproduced without written permission from Omniplan.	The purpose of the Design Control System is to ensure the design team only those who are to be used to show building permits or for construction. Construction documents are to be prepared by a licensed design professional in accordance with the applicable codes and standards. Any reproduction of these plans should be checked by the design team to ensure compliance with the applicable codes and standards. The design team and/or drawings may be subject to review, approval or rejection by the design team.	NO.	DESCRIPTION	DATE	BY
			1	ISSUED FOR CLIENT APPROVAL	MARCH 11, 2005	DEM
			2	ISSUED FOR CLIENT APPROVAL	MAY 23, 2005	DEM
			3	RE-ISSUED FOR SITE PLAN APPROVAL	JUNE 1, 2005	DEM
			3	RE-ISSUED FOR SITE PLAN APPROVAL	JUNE 17, 2005	DEM

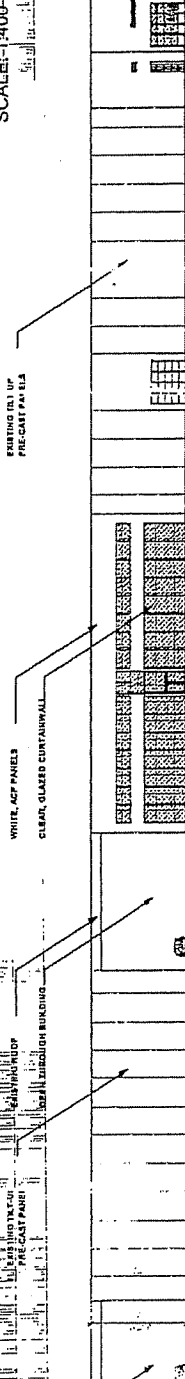
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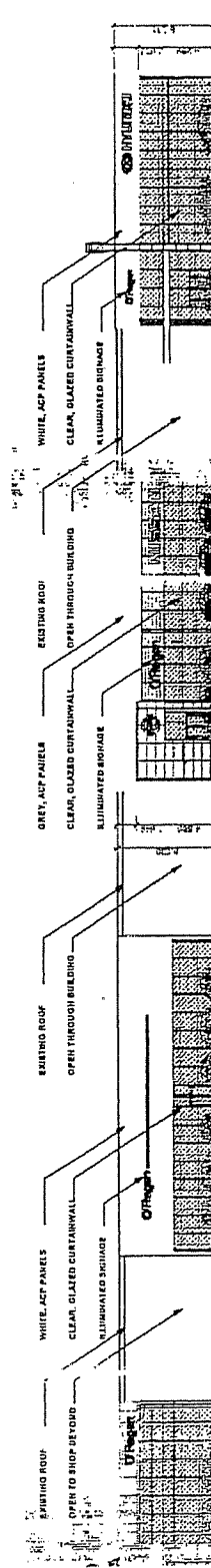
**EAST SIDE ELEVATION**  
**SCALE: 1:400**



WEST SIDE ELEVATION  
SCALE: 1/4" = 1'-0"

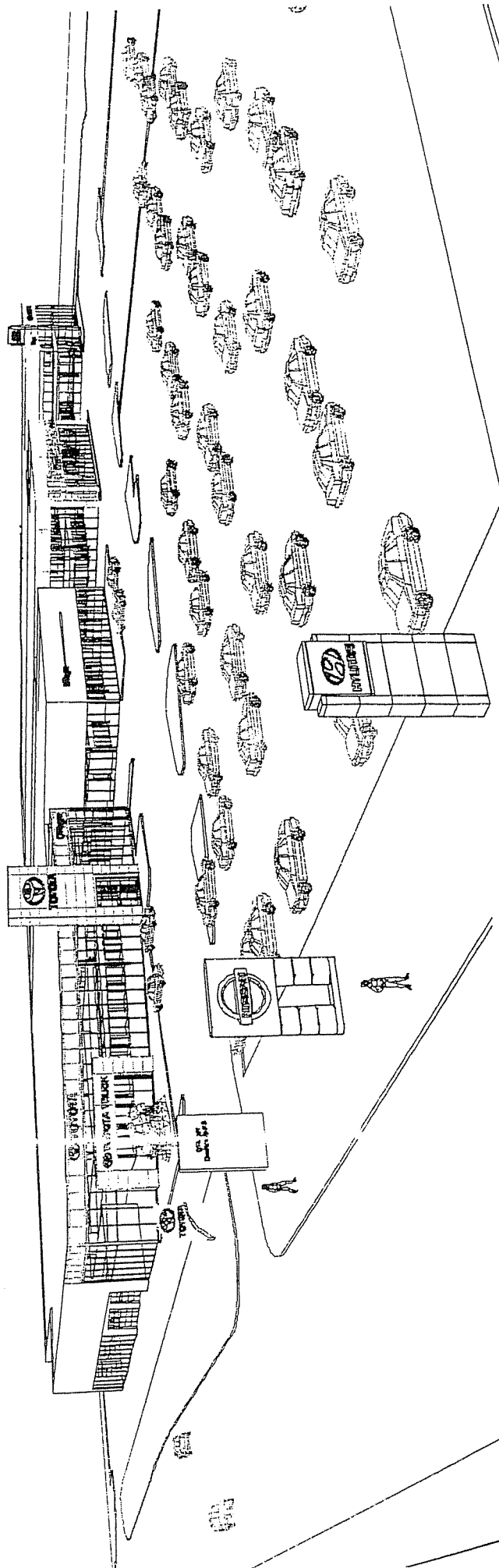


REAR ( SOUTH ) ELEVATION  
SCALE: 1:400



**SCHEDULE C-1 "ELEVATION  
DRAWING SIGNAGE PARCEL 1  
OMNIPLAN"**

E SYSTEM - DESIGN / CONTROL DOCUMENTS				O'REGAN AUTO MALL	
NO.	DESCRIPTION	DATE	BY		
1	ISSUED FOR CLIENT APPROVAL	MAY 23, 2004	DEM	DARTMOUTH NOVA SCOTIA	
2	RE-ISSUED FOR SITE PLAN APPROVAL	JUNE 7, 2004	DEM	Date: MARCH 14, 2004 Proj. No.: 341844	
3	RE-ISSUED FOR SITE PLAN APPROVAL	JUNE 18, 2004	DEM	Designed by: DEM Checked by: CIN	



SCHEDULE C-2  
PERSPECTIVE DEALER SIGNS



<b>OMNIPLAN</b> Architecture & Interior Design 1000 West 10th Avenue, Suite 100 Denver, CO 80202 Tel: 303.733.1111 Fax: 303.733.1112	<b>DESIGN COPYRIGHT</b>		<b>TOYOTA IMAGE SYSTEM - DESIGN CONTROL DOCUMENTS</b>		<b>O'REGAN AUTO MALL</b>	
	This drawing is the property of Omniplan. It is to be used only for the project and location specified. It is not to be reproduced, copied, or otherwise used without the written consent of Omniplan. The design is the property of Omniplan and is to be protected as such.		NO. 1 NISSAN STUDIES FOR CLIENT MAY 15, 1995 DEM		DATE MAY 15, 1995 DEM	
	NO. 2 RE-ISSUED FOR SITE PLAN APPROVAL JUNE 7, 1995 DEM		NO. 3 RE-ISSUED FOR SITE PLAN APPROVAL JUNE 11, 1995 DEM		NOVA SCOTIA DARTMOUTH DATE: MARCH 14, 1995 DESIGNED BY: DEM CHECKED BY: CN	

THIS AMENDING AGREEMENT made this       day of       , 2006,

**THE HOME DEPOT CANADA**  
a body corporate, in the County of Halifax  
("the Developer")

**HALIFAX REGIONAL MUNICIPALITY**  
a body corporate, in the County of Halifax,  
Province of Nova Scotia (“the Municipality”)

**WHEREAS** the Developer is the registered owner of a parcel of land located on the west side of Baker Drive, Dartmouth, which said parcel of land is more particularly described in Schedule “A” to this Agreement (“the lands);

**AND WHEREAS** the Parties have previously entered into a Development Agreement to allow, in part, the development of a home improvement centre (“Home Depot”) on the lands, the said agreement being recorded at the Registry of Deeds at Halifax in Book No. 6530 at Pages 1-48 (“the Existing Agreement”);

**AND WHEREAS** Harbour East Community Council approved this request at a meeting held on \_\_\_\_\_, 2006 (referenced as Municipal Case 00927);

**THEREFORE** in consideration of the mutual benefits from the covenants contained herein, the Parties agree as follows:

1. To add Section 2.5.9 as follows:

Driveways connecting Baker Drive to Parcel 1 shall be permitted substantially in accordance with Schedule B-3 and subject to compliance with Municipal Services Specifications, By-law S-300 and the approval of the Development Engineer.

2. To add Section 2.5.10

Notwithstanding Section 2.5.9, no proposed driveway connection between Parcel 1 and Baker Drive shall be installed prior to the completion and opening of the Baker Drive and Mount Hope Extensions and Interchange and a Professional Engineer has determined that the proposed driveway does not negatively impact traffic on Baker Drive.

3. To add Section 2.5.11

Any relocation or alterations to services shall comply with Municipal Services Specifications Guidelines and S-300 By-law.

4. Section 2.6.1 is deleted and replaced with the following:

Notwithstanding Schedule J of this Agreement, prior to the issuance of a Development Permit for Parcel 1 O'Regan's Auto Mall, the Developer shall prepare a detailed landscaping plan and planting schedule, including the type, number, size and location of all plant stock and furniture for all areas to be landscaped. Such plans and information shall require approval by the Development Officer, and modifications to the plans and materials submitted may be made as determined by the Development Officer.

5. Section 2.7.1 is deleted and replaced with the following:

Signage on the Parcel 1 building shall be limited to that as generally illustrated on Schedule "C-1", plus additional minor directional ground and fascia signs as may be required for vehicular/pedestrian traffic and "way-finding" purposes. Signage on the Parcel 2 buildings and Lands shall be limited to fascia sign banding which, in the opinion of the Development Officer, and on the advise of the Planner, is proportional in scale to the height and area of the facade. Additional minor directional ground and fascia signs are permitted as required for vehicular/pedestrian traffic and "way-finding" purposes.

6. To add Section 2.7.2.5:

**Notwithstanding the foregoing, upon removal of the 40 foot high pylon sign abutting Baker Drive on Parcel 1, four pylon signs shall be permitted on Parcel 1 abutting Baker Drive as generally illustrated on Schedules B-3 and C-2. Such signs shall only denote the commercial outlets found in the building(s), and shall be a maximum of 15 feet in height and the total sign face per area (one side) shall not exceed 120 square feet. Modifications in the locations of the signs may be approved by the Development Officer.**

7. To replace Section 2.7.5 as follows:

Signs to be placed on Parcel 1 shall not be installed or located in a manner that will impede stopping and decision sight distance. Confirmation is required by a Professional Engineer.

8. To delete Section 2.7.6.

A single temporary banner measuring not greater than four feet by sixteen feet shall be permitted on the front of the store or garden centre on Parcel 1.

9. To replace Section 2.12.3

Prior to the commencement of any work on the Lands, or associated off-site works, the Developer shall retain a qualified professional to prepare an erosion and sedimentation control plan that complies with Nova Scotia Department of Environment and Labour Guidelines. Such professional shall be retained for the duration of the construction phase of the project, until the site is stabilized. The professional shall provide the Development Officer with weekly written reports concerning the status environmental protection matters related to this site. The report shall include, but not limited to, the condition of erosion and sedimentation control measures, document rain events, additional measures taken in anticipation of rain events, any incidents in which a breach in measures occurred, and amount of site remaining with exposed fill.

10. To add Section 3.1(b) as follows:

Modifications to the number, size and type of signage.

11. All other terms of the Existing Agreement shall remain in full force and effect.

12. This Amending Agreement and everything contained herein shall be binding upon the Parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set hands and seals to this Amending Agreement on the day and year first above written.

SIGNED, SEALED AND DELIVERED  
in the presence of

Per \_\_\_\_\_

) The Home Depot Canada

)

)

) Per \_\_\_\_\_

)

)

) Per \_\_\_\_\_

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

) Halifax Regional Municipality

)

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) Per \_\_\_\_\_

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Mayor

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