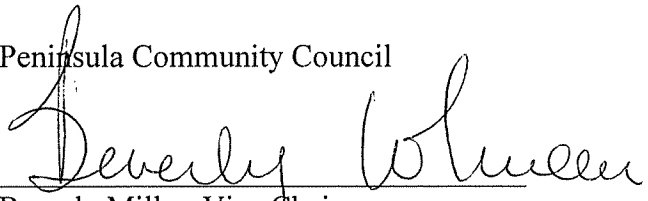


Peninsula Community Council  
April 10, 2006

**TO:** Peninsula Community Council

**SUBMITTED BY:**

  
Beverly Miller, Vice Chair  
District 12 Planning Advisory Committee

**DATE:** March 21, 2006

**SUBJECT:** Case 00877 - Halifax Port Authority Development Agreement

---

**ORIGIN**

District 12 Planning Advisory Committee meeting - March 20, 2006

**RECOMMENDATION**

The District 12 Planning Advisory Committee recommend that Peninsula Community Council:

1. Approve entering into the proposed development agreement to allow for the establishment of the non-harbour related industrial uses described within the proposed agreement (Attachment B of the supplementary report dated March 8, 2006);
2. Require that the agreement be signed within 120 days, or any extension thereof granted by Council on the 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.

**ATTACHMENT:**

Supplementary report dated March 8, 2006

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.

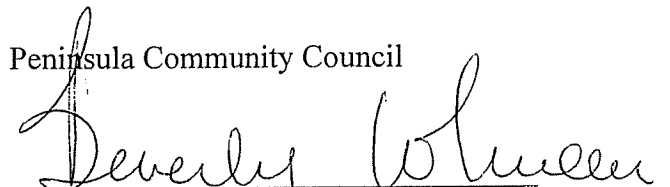
Report prepared by: Gail Harnish, Admin/PAC Coordinator, 490-4937

Peninsula Community Council  
April 10, 2006

**TO:**

Peninsula Community Council

**SUBMITTED BY:**



Beverly Miller, Vice Chair  
District 12 Planning Advisory Committee

**DATE:**

March 21, 2006

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Case 00877 - Halifax Port Authority Development Agreement

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Report prepared by: Gail Harnish, Admin/PAC Coordinator, 490-4937

**District 12 PAC - March 20, 2006**

**TO:** District 12 Planning Advisory Committee

**SUBMITTED BY:** Sharon Bond for  
Paul Dunphy, Director of Planning and Development Services

**DATE:** March 8, 2006

**SUBJECT:** Case 00877 - Halifax Port Authority Development Agreement

**SUPPLEMENTARY REPORT**

**ORIGIN**

Application from Halifax Port Authority.

**RECOMMENDATION**

It is recommended that Peninsula Community Council:

1. Approve entering into the proposed development agreement to allow for the establishment of the non-harbour related industrial uses described within the proposed agreement (Attachment B);
2. Require that the agreement be signed within 120 days, or any extension thereof granted by Council on the 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.

## **BACKGROUND**

After the Planning Advisory Committee deliberations on the Halifax Port Authority (HPA) development agreement on February 27, 2006, the HPA indicated that it wished to change the facade on the waterside of Pier Shed 21 that will be occupied by the Nova Scotia College of Art and Design (NSCAD) (Attachment A). This change is not expressly enabled by the previously considered proposed development agreement.

## **DISCUSSION**

Although the facade change is not expressly enabled under the previously considered development agreement, staff see no reason for it not to be allowed. It solely involves a facade change, with no enlargement in the size of the building. This facade change does not prevent the use of the building from being converted back from an art school use to a port use, such as a use related to the reception of cruise ship passengers.

The change is highlighted in **bold text** under Section 3.3.1 of the development agreement (Attachment B).

## **BUDGET IMPLICATIONS**

None.

## **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**

The following alternatives may be considered by Peninsula Community Council:

1. Council may approve the development agreement. This is the recommended alternative.
2. Council may choose to reject the proposed agreement giving specific reasons. This alternative is not recommended, as staff advise the proposed agreement satisfactorily complies with the policies and intent of the MPS.

**HPA Development Agreement**

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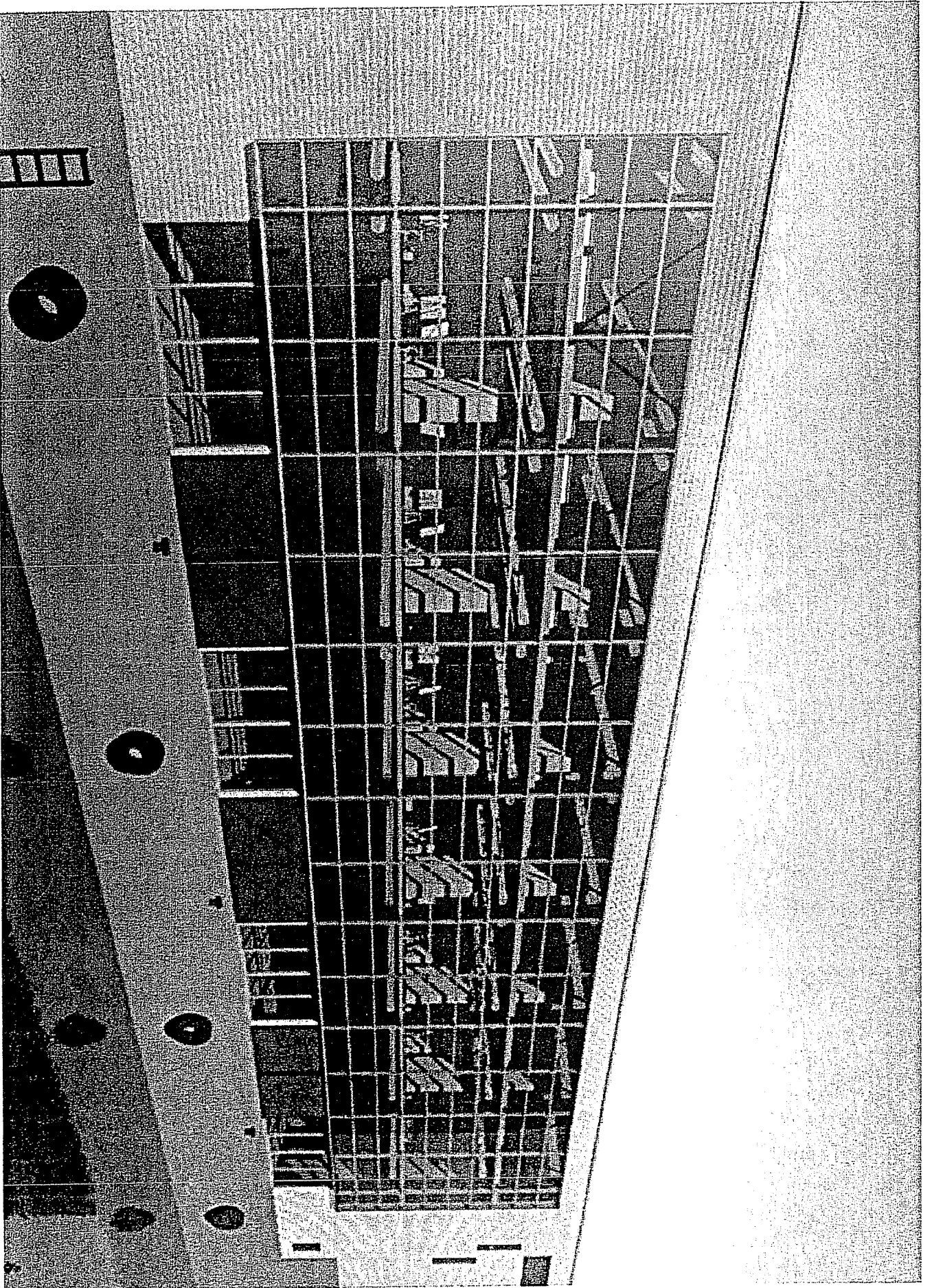
**ATTACHMENTS**

Attachment A - New Facade

Attachment B - Revised Development Agreement

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: Richard Harvey, Planner II, 490-3691



NSCAD University Port Campus - Proposed Harbourside Envelope  
Mackay-Lyons Sweetapple Architects Ltd. March 02, 2006

HPA Development Agreement

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**Attachment "B" - Revised Development Agreement**

THIS AGREEMENT made this                      day of                      , 2006,

BETWEEN:

HALIFAX PORT AUTHORITY  
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located on Marginal Road, a private road owned by the developer (PID 00483024), Halifax, Nova Scotia, and which said lands are more particularly described in Schedule 'A' to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for several non-harbour related industrial uses, pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Land Use By-law for the former City of Halifax;

AND WHEREAS the Peninsula Community Council approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 00877;

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

**PART 1: DEFINITIONS**

*Arcade* means the area between the Pier Shed 21 and Immigration Annex buildings that may be completely or partially covered by a roof along the length of these buildings, and which is fully open at either end to provide passage of pedestrians and vehicles.

*Art school* means a post secondary educational institution that is licenced by the Province of Nova Scotia, which is comprised of classrooms; workshops for the fabrication of art; laboratories;

exhibition halls; administrative suites; libraries; and/or; common areas and amenities for students, instructors, and administrators; but which shall not include residences.

*Art workshop/studio* means premises within which sculptures, paintings, photographs, furniture, crafts, apparel, or other forms of arts or crafts are produced or displayed, and may be sold to the public.

*Bakery/café* means premises within which baked goods or other foods, including prepared meals, are produced and shipped off-site and/or sold at the premises, but does not include a full-service restaurant.

*Existing* means the date in which this development agreement is approved by the Peninsula Community Council.

*Micro-brewery* means premises within which alcoholic and non-alcoholic beverages are produced and shipped offsite or sold on the premises, but not sold for consumption at the premises; and may include a retail store for the sale of brewery related merchandise and tours of the premises.

*Office* means a building or part thereof, designed, intended or used for: The practice of a profession; The carrying on of a business; or where not conducted on the site thereof, the administration of an industry; but shall not include a retail commercial use, any industrial use, clinic, financial institution, or place of assembly.

## **PART 2: GENERAL REQUIREMENTS AND ADMINISTRATION**

### **2.1 General Conditions**

- 2.1.1 The lands shall be subdivided, developed and used only in accordance with and subject to the terms and conditions of this Agreement.
- 2.1.2 Except as otherwise provided for herein, the development and use of the lands shall comply with the requirements of the Land Use By-law for Halifax Peninsula, as may be amended from time to time.
- 2.1.3 Pursuant to Section 2.1.2, 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 and Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia, and the Developer agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.



**HPA Development Agreement**

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- 2.1.4 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 and Subdivision 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.
- 2.1.5 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 owned by the Developer or lot owner.
- 2.1.6 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 3: USE OF LANDS AND DEVELOPMENT PROVISIONS****3.1 Schedules**

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

Schedule "A"	Legal Description of the Lands of Halifax Port Authority, identified as Property Identification number (PID) 00483024.
Schedule "B"	Site Plan

**3.2 Permitted Uses**

- 3.2.1 The use of the lands permitted by this Agreement shall be:
- (a) An art school occupying a maximum of 70,000 square feet of gross commercial floor area within the building referred to as "Shed 21" and as shown on Schedule "B";
  - (b) Restaurant(s) occupying a maximum of 7,000 square feet of gross floor area within the building referred to as Shed 21 as shown on Schedule "B";
  - (c) Art workshops/studios within the remaining gross commercial floor area within the building referred to as "Shed 21" as shown on Schedule "B";
  - (d) A micro-brewery and bakery/café occupying a combined maximum of 10,000 square feet of gross commercial floor area within the building referred to as "Immigration Annex" as shown on Schedule "B";
  - (e) Offices and art workshops/studios within the remaining gross commercial floor area within the building referred to as "Immigration Annex" as shown on Schedule "B";

**HPA Development Agreement**

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- (f) Periodic public assembly events and any temporary extension of any the adjacent uses that are permitted by this Agreement, such as the installation of seating associated with the bakery, within the arcade area referred to in 3.3.1 (b), between the Immigration Annex and Pier Shed 21 buildings and to the North of the Immigration Annex building; and
- (g) Any accessory uses to the foregoing.

3.2.2 The Development Officer may approve minor changes in gross floor areas occupied by the uses identified in 3.2.1.

**3.3 Building Alterations and Additions**

3.3.1 The following alterations and additions to the existing buildings shall be permitted:

- (a) "Shed 21" may be enlarged through the construction of a new facade on its land side (that which faces the "Immigration Annex"), which may extend beyond the current face of the building by a maximum of six (6) metres;
- (b) **There may be a new facade constructed on the waterside of "Shed 21" provided this does not result in the enlargement of the exterior of the building;**
- (c) An arcade, or any section or part thereof, may be constructed between "Shed 21" and the "Immigration Annex", which may be periodically closed to general vehicular traffic through gates or other similar means;
- (d) A silo associated with the micro-brewery, of a maximum height of 45 feet may be constructed to the North of the "Immigration Annex"; and,
- (e) Any other alterations may be permitted that in the opinion of the Development Officer are minor nature, in that they do not alter the overall style of the buildings, except as identified above.

3.3.2 No structural alterations shall be permitted which, in the opinion of the Development Officer, would preclude the buildings from being converted to a use permitted by the Harbour Related Industrial (C-5) Zone of the Halifax Peninsula Land Use Bylaw.

**3.4 Parking**

3.4.1 Prior to the issuance of any development permit pursuant to this Agreement, the developer shall submit a Parking Plan and Report, that is acceptable to the Development Officer, which identifies the location of parking areas and the number of spaces required for each use permitted by this Agreement and any existing or anticipated uses that are subject to the Harbour Related Industrial (C-5) Zone.

- 3.4.2 Prior to the occupancy of any building or premise by any tenant or land use permitted by this Agreement, the Developer shall have established any parking areas and parking spaces identified within the Parking Plan and Report pursuant to 3.4.1.

### **3.5 Signs**

- 3.5.1 Signs shall be permitted pursuant to the requirements of the Land Use Bylaw.

### **3.6 General Maintenance**

- 3.6.1 The developer shall maintain and keep the buildings and site in good repair and condition.

### **3.7 Applicability of Other Development Agreements**

- 3.7.1 This Agreement shall be separate from any other Development Agreements that are applicable to the Lands, namely those for the Pier 21 Society and RCR Catering Limited.

## **PART 4: AMENDMENTS**

### **4.1 Non-Substantive and Substantive**

- 4.1.1 The provisions of this agreement relating to the following matters are identified as, and shall be deemed to be, not substantive and may be amended by resolution of the Community Council:
- (a) Changes to the land uses; their location identified on Schedule "B"; and related gross floor area size specifications identified in 3.2.1.
- 4.1.2 Amendments to any matters not identified under 4.1.1 shall be deemed to be substantive and may only be amended in accordance with the adoption of development agreement requirements of the Municipal Government Act.

## **PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **5.1 Registration**

- 5.1.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and

the Developer shall pay or reimburse the Municipality for the registration cost incurred in recording such documents.

## **5.2 Effect of Conveyances**

5.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.

## **5.3 Discharge**

5.3.1 In the event that any of the requirements of this agreement are not undertaken as per its specifications, the Municipality may, by resolution of Council, discharge this Agreement, whereupon this Agreement shall have no further force or effect.

5.3.2 In the event that construction of the project has not commenced within one year from the date of approval of this Agreement by the Municipality, 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. For the purposes of this section, "commencement of construction" shall mean the issuance of a development permit.

5.3.3 Upon the completion of the development or portions thereof, or within two years from the date of approval of this Agreement, 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, as may be amended.

## **PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **6.1 Conditions**

6.1.1 Subject to the provisions of 7.1.1, 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 one day of receiving such a request.

6.1.2 Subject to the provisions of 7.1.1, if the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (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 Property 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 the Property 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 Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

## PART 7: FEDERAL RIGHTS AND OBLIGATIONS

### 7.1 Rights and Obligations

7.1.1 The Municipality confirms that it recognizes that entering onto this Agreement, the Halifax Port Authority is not ceding any of its right in respect to the Crown lands.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

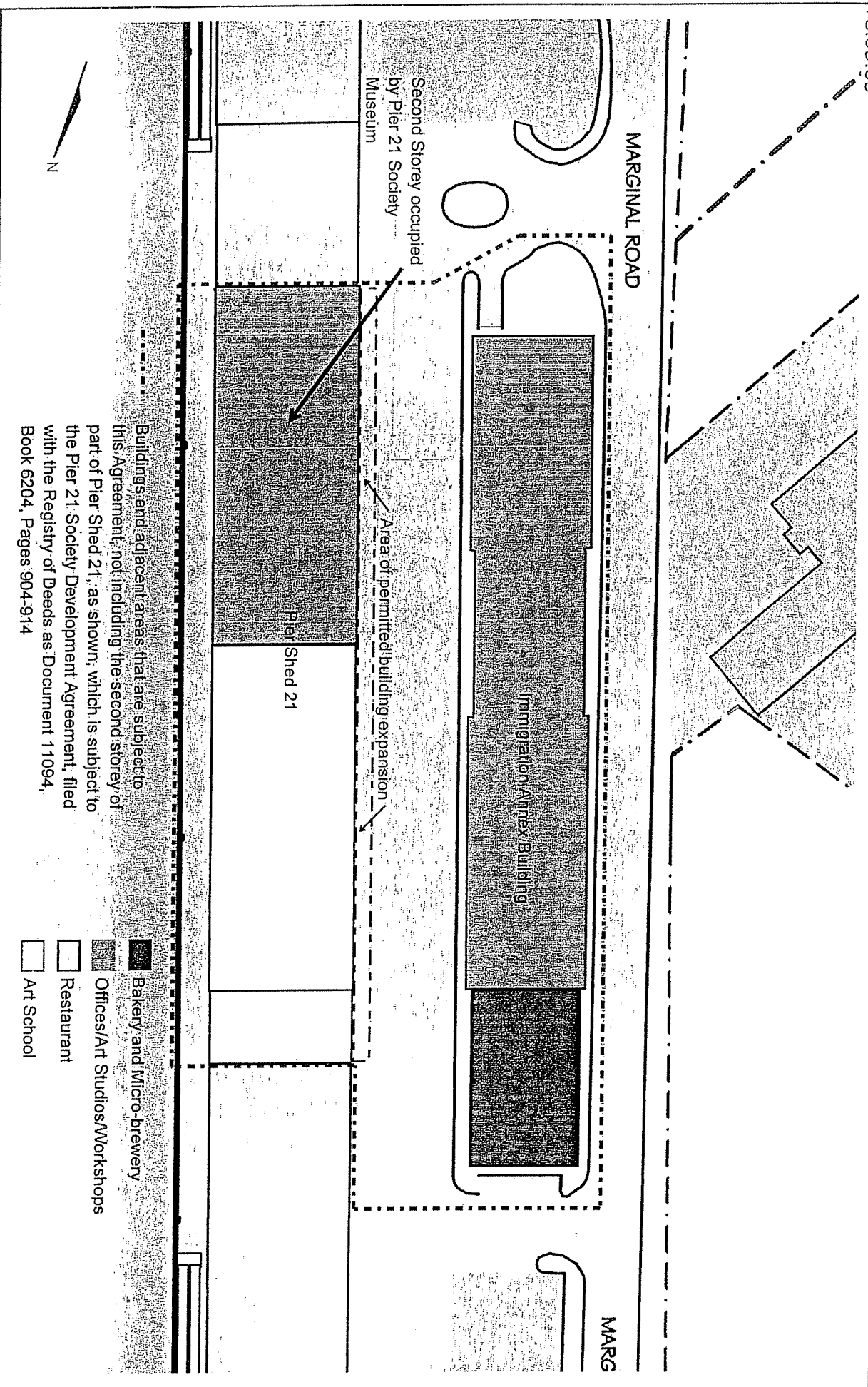
SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

	)	HALIFAX PORT AUTHORITY
	)	
	)	
	)	
	)	
per: _____	)	per: _____

Sealed, Delivered and Attested	)	HALIFAX REGIONAL MUNICIPALITY
by the proper signing officers of	)	
Halifax Regional Municipality	)	
duly authorized on that behalf	)	per: _____
in the presence of:	)	MAYOR
	)	
	)	
per: _____	)	per: _____
		MUNICIPAL CLERK

11.6.05.05



Buildings and adjacent areas that are subject to this Agreement, not including the second storey of part of Pier Shed 21, as shown, which is subject to the Pier 21 Society Development Agreement, filed with the Registry of Deeds as Document 11094, Book 6204, Pages 904-914

- ☒ Bakery and Micro-brewery
- ☒ Offices/Art Studios/Workshops
- ☐ Restaurant
- ☐ Art School