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Item No. 10.4.1 (i)

**Regional Council
August 11, 2009**

TO: Mayor and Members of Halifax Regional Council

SUBMITTED BY: Wayne Anstey
Wayne Anstey, Acting Chief Administrative Officer

DATE: July 17, 2009

SUBJECT: Case 01162 - Development Agreement, Hollis & Morris Streets

SUPPLEMENTARY REPORT

ORIGIN

- Recommendations for changes to the proposed building materials upon the base of the building and the inclusion of windows on the south-facing wall, Motion of the Heritage Advisory Committee - June 24, 2009
- Request for Supplementary Report, District 12 Planning Advisory Committee - May 25, 2009
- Staff Report and Proposed Development Agreement dated May 13, 2009
- Decision of Regional Council to include provision in the HRMbyDesign documents to grandfather this project under the existing planning objectives and policies of the Halifax Municipal Planning Strategy
- Application by Dixel Developments Limited

RECOMMENDATION

It is recommended that Regional Council:

1. Move Notice of Motion to consider the development agreement, as contained in Attachment A of this report, to allow for a ten storey, mixed-use building at 1267-1285 Hollis Street and 5142-5144 Morris Street, Halifax, and schedule a public hearing.
2. Approve the development agreement, as contained in Attachment A.
3. Require that the development agreement be signed and returned within 120 days, or any extension thereof granted by Regional Council on request of the Developer, from the date of final approval by Regional Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The Heritage Advisory Committee has recommended that Council approve the proposed development agreement for a 10 storey building at the south-west corner of Hollis and Morris streets, subject to two modifications to the original building design.

The first change concerns the building materials upon that part of the base of the building that is at the corner of Hollis and Morris. The original development agreement specified a stone veneer, the intent of which was to allow either a manufactured stone or a real stone exterior. The Heritage Advisory Committee recommends that the ground floor be comprised of a real stone veneer, limiting the use of manufactured stone to the upper storeys.

The second change relates to a brick wall on the southern side of the building that has been cited as a “blank wall.” The Heritage Advisory Committee noted that it may be sometime before another building is built on the adjoining lot to obscure this wall. It recommends that windows be incorporated to provide visual interest.

The Heritage Advisory Committee’s modifications have been agreed to by the Developer and are included in a revised development agreement attached to this Supplementary Report (Attachment A). The alterations have resulted in updates to the building plans (the Schedules depicting the building elevations), but no changes to the text of the proposed Agreement.

DISCUSSION

The changes to the development agreement that have been recommended by the Heritage Advisory Committee are viewed as improvements to the building design. The modifications have not changed staff’s analysis and findings, as found in the original staff report and its subsequent Supplementary Report dated June 15, 2009. The revised development agreement continues to meet the objectives and policies of the Halifax Municipal Planning Strategy and is therefore recommended to Regional Council for approval.

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

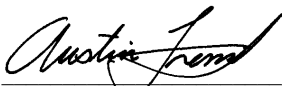
1. Regional Council could approve the proposed development agreement. This is the recommended alternative.
2. Regional Council could refuse the proposed development agreement. Pursuant to subsection 6 of Section 254 of the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal based on the policies of the MPS.
3. Regional Council could approve the proposed development agreement with changes. This alternative would require concurrence with the developer and would need to be consistent with the objectives and policies of the Halifax Municipal Planning Strategy and the Regional Municipal Planning Strategy. An additional public hearing may also be required.


ATTACHMENTS

Attachment A Revised Development Agreement (With Modifications Requested by the Heritage Advisory Committee)

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Richard Harvey, Senior Planner, 490-5637

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

Report Approved by: 
Paul Dunphy, Director, Community Development

**Attachment A - Revised Development Agreement
(With Modifications Requested by the Heritage Advisory Committee)**

THIS AGREEMENT made this _____ day of _____, 2009,

BETWEEN:

ROCKSTONE INVESTMENTS LIMITED,
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at PID _____ and identified as 1267 Hollis Street, and PID _____ and identified as 1275-1285 Hollis Street and 5142-5144 Morris Street, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for a 10 storey mixed use residential/commercial building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 3.5.2 of the Implementation Policies of Halifax Municipal Planning Strategy and Section 85 of the Halifax Peninsula Land Use By-law;

AND WHEREAS Regional Council approved this request at a meeting held on [INSERT - Date], referenced as Municipal Case Number 01162;

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

- 1.1.1 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

- 1.2.1 Except as otherwise provided for herein, the development, subdivision, and use of the Lands shall comply with the requirements of the Halifax Peninsula 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 and Federal Governments and the Developer and/or lot owner agree to observe and comply with all such laws, by-laws and regulations 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 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

- 1.5.1 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

- 1.6.1 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

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

2.2 Definitions Specific to this Agreement

- 2.2.1 The following words used in this Agreement shall be defined as follows:

- (a) **“Building”** means the building that is the subject of this Agreement and as shown in its Schedules.
- (b) **“Information sign”** means a sign providing information, including a sign guiding vehicular or pedestrian traffic, that is generally for safety or directional purposes.
- (c) **“Landscape Architect”** means a professional, full member in good standing with the Canadian Society of Landscape Architects.
- (d) **“Living Wall”** means vegetation that is installed upon the wall of a building.
- (e) **“Personal service use”** means a business that is associated with the grooming or health of persons or the maintenance or repair of personal wardrobe articles and accessories, and may include a hair salon, beauty parlor, tailor, self service laundry, or depots for collecting dry cleaning and laundry.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the Schedules attached to this Agreement, unless further specified under the Agreement, and filed in the Halifax Regional Municipality as Case Number 01162:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Landscaping Plan
Schedule D	Building Elevation (North)
Schedule E	Building Elevation (South)
Schedule F	Building Elevation (East)
Schedule G	Building Elevation (West)
Schedule H	P2 Parking Level
Schedule I	P1 Parking Level
Schedule J	Floor Plan - 1 st Level
Schedule K	Floor Plan - 2 nd Level
Schedule L	Floor Plan - 3 rd Level
Schedule M	Floor Plan - 4 th Level
Schedule N	Floor Plan - 5 th Level
Schedule O	Floor Plan - 6 th Level
Schedule P	Floor Plan - 7 th Level
Schedule Q	Floor Plan - 8 th Level
Schedule R	Floor Plan - 9 th Level
Schedule S	Floor Plan - 10 th Level
Schedule T	Roof Level

3.2 Permitted Land Uses

- 3.2.1 The following uses shall be permitted on the lands:

- (a) banks;
- (b) commercial recreation uses;
- (c) daycares;
- (d) offices;
- (d) personal service uses;

- (e) schools;
- (f) stores for retail trade;
- (g) residential uses; and
- (h) restaurants.

3.2.2 For greater certainty, in no case shall adult entertainment uses be permitted.

3.3 Land Use Requirements

3.3.1 Changes in the interior arrangement of floor space shown on 1st Level (Schedule J) shall be permitted provided that the “Commercial Space” is in general conformance with said schedule.

3.3.2 The uses permitted in the floor area generally identified on the 1st Level (Schedule J) as “Commercial Space” shall be restricted to:

- (a) banks;
- (b) commercial recreation uses;
- (c) daycares;
- (d) personal service uses;
- (e) restaurants;
- (f) schools; and
- (g) stores for retail trade.

3.3.2 The primary entrances for the uses identified in 3.3.2 shall be directly from Hollis and Morris streets, in general conformance with the Schedules.

3.3.3 A maximum of 1 dwelling unit shall be permitted on the 1st Level (Schedule J).

3.3.4 The 2nd Level through the 10th Level (Schedules K through S) shall be comprised of residential uses to a maximum of 84 dwelling units.

- 3.3.5 Changes in the interior arrangement of dwelling units shown on the 2nd Level through the 10th Level, (Schedules K through S) shall be permitted provided that the maximum number of the dwelling units specified in clause 3.3.3 is not exceeded and that such changes comply with all other requirements of Agreement including the parking space requirements.
- 3.3.6 Notwithstanding clause 3.3.4, the 2nd Level (Schedule K) may be used, in whole or in part, for non-residential uses that are permitted by this Agreement. Such a change in use shall not reduce the maximum number of dwelling units specified in clause 3.3.3.
- 3.3.7 The hours of operation for restaurants shall be between 7:00 a.m. and 12:00 a.m.

3.4 View Plane Requirements

- 3.4.1 For greater certainty, with regard to clause 3.1.1 (the Schedules of this Agreement), and notwithstanding any other provision of this Agreement, no element of the building, including any fixture which is to be attached to the building, shall violate the view plane requirements of the Land Use By-law.

3.5 Awnings

- 3.5.1 Where fixed or retractable awnings are shown on the Schedules as encroaching into the Municipal right-of-way, such encroachment shall be subject to separate Municipal approval pursuant to 1.3.1.
- 3.5.2 Where such awnings are permitted pursuant to 3.5.1, they shall be comprised of fabric material and any signage upon them shall be subject to the signage requirements of this Agreement.

3.6 Roof Mounted Mechanical and Telecommunication Equipment

- 3.6.1 Roof mounted mechanical equipment shall be as generally shown on the Schedules. Changes to the number, placement, size, and type of mechanical equipment shall be permitted where said equipment is visually concealed in a manner that is consistent with that which is shown on the Schedules.
- 3.6.2 Roof mounted telecommunication equipment shall be integrated into the roof design of the building.

3.7 Functional Elements

- 3.7.1 Other than roof mounted mechanical equipment, pursuant to 3.6.1, mechanical equipment, exhausts (except exhausts for individual dwelling units), propane tanks, electrical transformers, and other utilitarian features shall be visually concealed from abutting properties, including municipal rights-of-way.

3.8 Parking

- 3.8.1 The following parking requirements shall apply:
- (a) The minimum size of a parking space shall be 8 feet in width and 16 feet in length;
 - (b) The minimum width of driveways between parking spaces shall be 20 feet; and
 - (c) Parking shall be provided at a rate of:
 - (i) 1 parking space for every 4 bachelor dwelling units or 1 bedroom units, or part thereof; and
 - (ii) 1 parking space for every dwelling unit that is not a bachelor dwelling unit or 1 bedroom unit;
- 3.8.2 In addition to the vehicular parking shown on P2 Parking Level (Schedule H) and P1 Parking Level (Schedule I), bicycle parking shall be provided in accordance with the requirements of the Land Use By-law.
- 3.8.3 The parking space arrangement shown on P2 Parking Level (Schedule H) and P1 Parking Level (Schedule I) may be modified provided that the requirements of 3.8.1 and 3.8.2 are met.

3.9 Landscaping

- 3.9.1 Prior to the issuance of a Development Permit and Building Permit for the construction of the building, the Developer shall provide the Municipality with a detailed landscape plan, prepared by a Landscape Architect, which shall include design specifications and cost estimates for landscaping on the Lands. Landscaping shall be in general conformity with the Landscaping Plan (Schedule C) and shall be subject to the approval of the Development Officer.

- 3.9.2 Prior to issuance of the first Occupancy Permit, the Developer shall submit to the Development Officer a letter prepared by a Landscape Architect or other qualified professional certifying that all landscaping has been completed on the Lands according to the terms of this Agreement.
- 3.9.3 Notwithstanding clause 3.9.2, the first Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of 110 percent 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 as approved by the Development Officer. Should the Developer not complete the landscaping within 12 months of issuance of the first 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 by a Landscape Architect.
- 3.9.4 It is the responsibility of the Developer to ensure that the underground parking structure and rooftop terraces are capable of supporting the loads from all landscaping as well as the anticipated mature weight of the plant material.

3.10 Building Lighting

- 3.10.1 This Agreement shall not oblige the Developer to illuminate the building, but where the building is illuminated, such illumination shall generally comply with the Schedules.
- 3.10.2 Lighting for signage, walkways, patios, balconies, and entrances shall be permitted and is not subject to 3.10.1.
- 3.10.3 The lighting pursuant to 3.10.1 and 3.10.2 shall be directed away from surrounding properties, including municipal right-of-ways except to the extent as shown on the Schedules.
- 3.10.4 Lighting shall be white in colour and shall not include illumination that flashes, moves, or varies in intensity.

3.11 Signage

- 3.11.1 Signs, excepting information signs, shall be related to businesses within the building.
- 3.11.2 Signs shall be externally illuminated, excepting that signage comprised of individual lettering may be backlit.
- 3.11.3 Signs shall not include any animation or illumination that flashes, moves, or varies in intensity.
- 3.11.4 Signs are permitted on the following parts of the building:
 - (a) upon awnings, in general compliance with the Schedules;
 - (b) above storefront windows and entrances, as fascia signs, upon the band above the first floor, to a maximum height of 3 feet; and
 - (c) upon or behind 1st floor windows provided they occupy a maximum of 30 percent of that window's area.
- 3.11.5 Information signs are permitted on all parts of the building.

3.12 Outdoor Storage and Display

- 3.12.1 No outdoor storage or outdoor display shall be permitted.

3.13 Solid Waste

- 3.13.1 Unless otherwise agreed to or required by the Municipality pursuant to 1.3.1, the Developer shall be responsible for solid waste collection from the building.
- 3.13.2 Unless otherwise agreed to or required by the Municipality pursuant to 1.3.1, the building shall include a designated space for four stream (refuse, recycling, cardboard, 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 Official in consultation with Solid Waste Resources.

3.14 Deliveries and Solid Waste Collection

- 3.14.1 Unless otherwise agreed to or required by the Municipality pursuant to 1.3.1, the private collection of refuse and recyclables and deliveries shall occur between the hours of 7:00 a.m. and 9:00 p.m..

3.15 Construction/Sales Structure

- 3.15.1 A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development. The structure shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

3.16 Maintenance

- 3.16.1 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.

3.17 Requirements Prior to Approval

- 3.17.1 Unless otherwise agreed to or required by the Municipality pursuant to a separate regulation or by-law, prior to the application for any municipal permits for the building, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional) process, as outlined by the Municipality.
- 3.17.2 Prior to the issuance of a Development Permit and a Building Permit for the building, the Developer shall provide the following to the Development Officer:
- (a) Written certification and plans from a Professional Surveyor that the proposed development conforms with the view plane requirements of the Land Use By-law;
 - (b) A detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.9 of this Agreement; and

- (c) Confirmation of the undergrounding arrangement in accordance with Section 4.2 of this Agreement.
- 3.17.3 Prior to the issuance of a Development Permit and a Building Permit for the construction of the building, the Developer shall consolidate the lands into 1 lot.
- 3.17.4 Prior to the issuance of an Occupancy Permit for any of the components of the development on the Lands, the Developer shall provide the following to the Development Officer:
 - (a) Written certification and plans from a Professional Surveyor that the completed building complies with the view plane requirements of the Land Use By-law; and
 - (b) Certification from a Landscape Architect that the Developer has complied with Section 3.8 of this Agreement.
- 3.17.5 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands 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, licences, and approvals required to be obtained by the Developer pursuant to this Agreement.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

- 4.1.1 All construction shall conform to the Municipal Services Specifications unless otherwise varied by this Agreement and shall receive written approval from the Development Engineer prior to undertaking any work.
- 4.1.2 Any disturbance to existing off-site infrastructure resulting from the development, including 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 Municipal Engineer.

4.2 Underground Services

- 4.2.1 The Developer agrees to place all primary and secondary utility services (electrical and communication distribution systems) underground. In addition to being responsible for the full cost of placing secondary services underground, the Developer agrees to pay for all infrastructure costs required to place the primary utility services underground that are currently above ground within those portions of Morris Street and Hollis Street which abut the Lands. The Developer is responsible for meeting the requirements of applicable utility companies.
- 4.2.2 The Municipal Engineer may waive or alter the requirements of 4.2.1 where improvements to utility services are necessary that are beyond the obligations of the Developer as specified in clause 4.2.1 and the Developer is unable to secure such improvements from an applicable utility provider.

4.3 Proposed Encroachments

- 4.3.1 Any proposed building encroachments into the street rights-of-way, illustrated on the attached Schedules or otherwise, shall be subject to separate Municipal approval pursuant to 1.3.1.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Archaeological Monitoring and Protection

- 5.1.1 The Lands fall within the High Potential Zone for Archaeological Sites identified by the Province of Nova Scotia. The Developer agrees to contact the Curator of Special Places, Heritage Division, Tourism, Culture, and Heritage prior to any disturbance of the site and to comply with the requirements set forth by the Province of Nova Scotia in this regard.

5.2 Sulphide Bearing Materials

- 5.2.1 The Developer agrees to comply with the legislation and regulations of the Province of Nova Scotia with regards to the handling, removal, and disposal of sulphide bearing materials, which may be found on the Lands.

PART 6: AMENDMENTS

6.1 Substantive Amendments

- 6.1.1 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 *Halifax Regional Municipality Charter*.

6.2 Non-substantive Amendments

- 6.2.1 The following items are considered by both Parties to be non-substantive and may be amended by resolution of Council:
- (a) Changes to the exterior materials and colours of the building as shown on the Schedules;
 - (b) Changes to the land use requirements specified in Section 3.3;
 - (c) Changes to the awning provisions specified in Section 3.5;
 - (d) Changes to the roof mounted mechanical and telecommunication equipment provisions specified in Section 3.6;
 - (e) Changes to the functional elements provisions specified in Section 3.7;
 - (f) Changes to the parking provisions specified in Section 3.8;
 - (g) Changes to the landscaping provisions specified in Section 3.9 and including the Landscaping Plan (Schedule C);
 - (h) Changes to the building lighting provisions specified in clauses 3.10.1, 3.10.2, and 3.10.4.
 - (i) Changes to the signage provisions specified in Section 3.11, including the Schedules;
 - (j) Changes to the requirements prior to approval specified in Section 3.17;

- (k) Changes to the requirements for underground services specified in Section 4.2;
- (l) Changes to the date of commencement of development specified in Section 8.3; and
- (m) Changes to the date of completion of development specified in Section 8.4.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

- 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 twenty four (24) hours of receiving such a request.

7.2 Failure to Comply

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

PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.1 Registration

- 8.1.1 A copy of this Agreement and every amendment and/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 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 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

- 8.3.1 In the event that development on the Lands has not commenced within 3 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.
- 8.3.2 For the purposes of Subsection 8.3.1, commencement of development shall mean the installation of the foundation for the building.
- 8.3.3 For the purpose of Subsection 8.3.1, Council may consider granting an extension of the commencement of development time period through a

resolution under Section 6.2.1, if the Municipality receives a written request from the Developer at least 60 calendar days prior to the expiry of the commencement of development time period.

8.4 Completion of Development

8.4.1 Upon the completion of the development or portions thereof, or after 6 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia, 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 Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, 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)	<u>ROCKSTONE INVESTMENTS LIMITED</u>
in the presence of)	
_____)	Per: _____
)	
)	
)	
SEALED, DELIVERED AND)	
ATTESTED to by the proper)	
signing officers of Halifax Regional)	<u>HALIFAX REGIONAL MUNICIPALITY</u>
Municipality duly authorized)	
in that behalf in the presence)	Per: _____
of)	MAYOR
_____)	
)	Per: _____
)	MUNICIPAL CLERK