


Item No. 9.1 (i)
Halifax Regional Council
April 12, 2011
May 10, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: March 30, 2011

SUBJECT: **Case 01172: Development Agreement, Barrington/ Sackville/
Granville Streets, Halifax**

ORIGIN

- Application by 778938 Ontario Limited (Starfish Properties) to enter into a development agreement to permit a mixed-use development at 1651-57 Barrington Street and 1652-66 Granville Street (the "Roy Building") and 5181-87 Sackville Street, Halifax;
- June 16, 2009 Regional Council approval of the Downtown Halifax Secondary Municipal Planning Strategy which includes policies to enable Council to consider this proposal under the policies of the Halifax Municipal Planning Strategy in effect when the complete application was received; and
- August 17, 2010 Regional Council approval of amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Barrington Street Heritage Conservation District Revitalization Plan that affirms that this application be considered under the planning policies that were in effect at the time in which this application was submitted.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Give Notice of Motion to consider an application by 778938 Ontario Limited for a development agreement at 1651-57 Barrington Street and 1652-66 Granville Street (the "Roy Building") and 5181-87 Sackville Street, Halifax, and schedule a public hearing;

RECOMMENDATIONS CONTINUED ON PAGE 2

2. Approve the development agreement, included as Attachment A of this report, to permit a mixed-use development; and
3. Require that the development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The subject application for a development agreement is one of the “grandfathered” projects which Council included provision for in the Downtown Halifax Secondary Municipal Planning Strategy (DHSMPS) on June 16, 2009. However, it was later determined that there was also a need to amend the Barrington Street Heritage Conservation District (BSHCD) Revitalization Plan and By-law (By-law H-500). Following is a brief sequence of events regarding the application:

- November 25, 2009: Staff report dated November 18, 2009 was presented to the Heritage Advisory Committee (HAC). The HAC passed a motion to recommend that Council refuse to enter into the development agreement;
- November 30, 2009: Staff report dated November 18, 2009 was presented to the District 12 Planning Advisory Committee (PAC). The PAC questioned whether there was a need to amend the Barrington Street Heritage Conservation District Revitalization Plan and By-law (By-law H-500). PAC subsequently deferred a decision pending HRM Legal Services review of the matter;
- January 12, 2010: Regional Council instructed staff to initiate a process to amend the DHSMPS and the BSHCD Revitalization Plan and By-law H-500;
- February 18, 2010: Public Meeting held regarding proposed amendments to the DHSMPS and the BSHCD Revitalization Plan and By-law H-500;
- August 17, 2010: Public hearing held. Proposed amendments were approved by Regional Council; and
- February 12, 2011: A “Notice of Approval” advertisement was placed in the Chronicle Herald indicating that the amendments were reviewed by the Province (Service N.S. and Communities, Culture and Heritage departments) and are now in effect.

DISCUSSION

As the amendments to the DHSMPS and the BSHCD Revitalization Plan and By-law H-500 are now in effect, Council may consider the attached development agreement (Attachment A). The DHSMPS indicates that the grandfathered projects, if approved by Council, are to commence within 3 years and be completed within 6 years of the date of execution of the agreement. Since the time of the drafting of the original staff report of November 18, 2009, staff recognized that the draft agreement included the possibility of a (future) non-substantive amendment to the commencement and completion dates. Such a clause would be contrary to the specific DHSMPS policy on this matter. As a result, these clauses of the agreement have been deleted to be

consistent with the DHSMPs.

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 this Agreement can be carried out within the proposed budget with existing resources.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the proposed Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting held on July 9, 2008 (refer to staff report dated November 18, 2009, section entitled "Public Participation/ Area of Notification"). A public hearing has to be held by Council before they can consider approval of the agreement.

For the Public Information Meeting, notices were posted on the HRM website, in the newspaper, and mailed to property owners within the notification area as shown on Map 2 of the staff report dated November 18, 2009. Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners will be notified within the notification area.

The proposed development agreement will potentially impact the following stakeholders: local residents, property owners, persons and groups interested in heritage preservation, local businesses, and the Downtown Halifax Business Commission.

ALTERNATIVES

1. Council may approve the proposed development agreement. This is the recommended course of action.
2. Council may refuse the development agreement and, in doing so, must provide reasons based on conflict with MPS policy which existed at the time of the completed application.
3. Council may approve the development agreement with modifications which are acceptable to the applicant. Such modifications may require further negotiations with the applicant or revisions to the attached agreement.

ATTACHMENTS

Attachment A Draft Development Agreement with Schedules

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: Paul Sampson, Planner I, 490-6259

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

Financial Approval by: _____
For Bruce Fisher MPA/CMA, Acting Director of Finance, 490-6308

Report Approved by: _____
Austin French, A/Director of Community Development, 490-6717

ATTACHMENT A

THIS AGREEMENT made this day of , 2011,

BETWEEN:

(INSERT DEVELOPER NAME),
a body corporate, in the Province of Ontario,
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at Civic No. 1651-1657 Barrington Street/ 1652-1666 Granville Street and 5181-5187 Sackville Street, Halifax (Insert PID #s) 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 mixed-use development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter*, Policy 3.5.1 of the Implementation Policies of Halifax Municipal Planning Strategy and Section 84 the Halifax Peninsula Land Use By-law;

AND WHEREAS the Halifax Regional Council, at a meeting held on _____, 2011, approved the said agreement to allow for a commercial retail/ office development on the lands (referenced as Municipal Case Number 01172) subject to the registered owner of the lands described herein entering into this agreement ;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, subdivision and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Halifax 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 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: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this agreement (plans numbered 01172-001 to 01172-014 inclusive) filed in the Halifax Regional Municipality as Case Number 01172.

The schedules are:

Schedule A	Legal Description of the Lands	
Schedule B	Granville Floor Plan/ Parking Level 2	Plan # 01172-001
Schedule C	Parking Level 1	Plan # 01172-002
Schedule D	Barrington Floor Plan	Plan # 01172-003
Schedule E	1 st Floor Plan	Plan # 01172-004
Schedule F	Typical Floor Plan, 2 nd to 4 th Levels	Plan # 01172-005
Schedule G	5 th Floor Plan	Plan # 01172-006
Schedule H	Typical Floor Plan, 6 th to 15 th Levels	Plan # 01172-007
Schedule I	Roof/ Penthouse Floor Plan	Plan # 01172-008
Schedule J	Barrington Street Elevation	Plan # 01172-009
Schedule K	Granville Street Elevation	Plan # 01172-010
Schedule L	Sackville Street Elevation	Plan # 01172-011
Schedule M	North Elevation	Plan # 01172-012
Schedule N	Barrington Street Elevation - Detail	Plan # 01172-013
Schedule O	Granville Street Elevation - Detail	Plan # 01172-014

2.2 Requirements Prior to Approval

2.2.1 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Municipality:

- (a) Landscape Plan as per the requirements of Section 2.5;
- (b) surveyor certification in accordance with Section 2.10 of this agreement;

- (c) pedestrian wind study identifying any mitigation measures / solution concepts in accordance with Section 2.11 of this agreement.
- 2.2.2 Prior to the issuance of the first Occupancy Permit, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Municipality:
 - (a) Certification from a qualified professional indicating that the Developer has complied with the Landscape Plan and Section 2.5;
 - (b) surveyor certification in accordance with Section 2.10 of this agreement;
 - (c) completion of wind mitigation measures in accordance with Section 2.11 of this agreement.
- 2.2.3 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, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

2.3 General Description of Land Use

- 2.3.1 The use(s) of the Lands permitted by this Agreement, as generally shown on the Schedules, are the following:
 - (a) Any business or commercial enterprise permitted in the C-2 (General Business) zone;
 - (b) Cultural uses as defined by the Municipal Planning Strategy;
 - (c) institutional uses;
 - (d) residential uses;
 - (e) uses accessory to any of the foregoing uses.
- 2.3.2 The Development Officer may approve changes to the interior floor plans (Schedules B through I).

2.4 Architectural Requirements

- 2.4.1 The building's exterior design, materials and colours shall be as shown on Schedules J through O.
- 2.4.2 The base portion of the building shall employ two distinct facade designs. The Barrington Street facade (Schedules J and N) shall be constructed to replicate the features and materials of the original Roy Building. Stone from the existing structure shall be utilized in the new construction where possible. New brick cladding or precast concrete veneer shall be similar in appearance to the brick on the Johnston Building (Civic 1683

Barrington Street). The Granville and Sackville Street facades (Schedules K, L and O) shall consist primarily of a combination of brick/ stone or precast concrete veneer and glass. Stone, masonry or precast concrete veneer on the first two levels above grade shall appear similar to the stone on the Johnston Building. Brick or precast material on the upper levels of the base shall appear similar to the brickwork of the Johnston Building.

- 2.4.3 The tower portion of the building shall be clad with a combination of glass/ aluminum curtain wall and composite panels with glass as shown on Schedules J through M.

2.5 Landscaping

- 2.5.1 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 provide details of the rooftop landscaped area shown on Schedule "G". Landscaping shall generally consist of both hard surface areas and areas of "low grass and flowers" as shown on Schedule "G".
- 2.5.2 Areas shown on Schedule "G" as "low grass and flowers" shall be extensive (passive) green roof areas designed to be generally self-sustaining, requiring a minimum of maintenance. In contrast, areas shown as "hard surface" shall be active areas generally accessible to building occupants and shall contain a combination of concrete pavers, walkways, shrubs, deciduous and coniferous trees, site furnishings and landscaping features.
- 2.5.3 Planting on rooftops and podiums above structures shall be carefully selected for their ability to survive in rooftop environments. Rooftop trees shall be located in planting beds or containers. Approximately 50 percent of the plant material shall be evergreen or material with winter colour and form. Deciduous trees shall have a minimum size of 45 mm caliper (1.8 inch diameter). Coniferous trees shall be a minimum of 1.5 m (5 ft.) high and upright shrubs shall have a minimum height of 60 cm. (2 ft.).
- 2.5.4 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 2.5.5 Planting details for each type of plant material proposed on the landscape plan shall be provided, including species list with quantities, size of material, and common and botanical names (species and variety). Mass shrub plantings or mixed shrub and ground cover plantings are preferred instead of perennial beds.
- 2.5.6 Construction Details or Manufacturer's Specifications for all constructed landscaping features such as pergolas, benches, etc. shall be provided to the Development Officer, and shall describe their design, construction, specifications, hard surface areas, materials and placement so that they will enhance the design of individual buildings and the character of the surrounding area.

- 2.5.7 Prior to 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.
- 2.5.8 Notwithstanding the above, an Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape work and the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping as shown on the Landscape Plan. 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 landscaping as described herein 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. 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.

2.6 Ground Floor Uses

- 2.6.1 The ground floor commercial spaces shown on Schedules C and D (Barrington, Granville levels) shall be limited to retail, restaurant, lounge/ entertainment, personal services or cultural uses. Offices may be permitted but shall not directly abut or face a sidewalk at street-level.

2.7 Signs

- 2.7.1 Exterior signs shall be generally limited to:
- (a) awning signs made of fabric material; and
 - (b) fascia and projecting signs.
- 2.7.2 The Developer agrees that all signs indicated in section 2.7.1 which are located along the ground floor or second floor facade be designed to generally follow the municipality's basic principles for signage on heritage properties and that municipal sign permit applications be approved by the Development Officer, in consultation with the Heritage Planner, to ensure that the building signs are generally in keeping with or complementary to those of the Barrington Street district.

2.8 Building Lighting

- 2.8.1 This Agreement shall not oblige the Developer to illuminate the building, but where the building is illuminated, such illumination shall generally comply with the Sections 2.8.2 and 2.8.3.

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

2.8.3 The building may be illuminated for visual effect provided such illumination is directed away from streets, adjacent lots and buildings and does not flash, move or vary in intensity such that it creates a hazard to public safety.

2.9 Functional Elements

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

2.9.2 Other than roof mounted equipment, any mechanical equipment, exhausts, propane tanks, electrical transformers, and other utilitarian features shall be visually concealed from abutting properties, including municipal rights-of-way.

2.10 Surveyor Certification re: Citadel Ramparts

2.10.1 Prior to the issuance of both a Development Permit and Occupancy Permit for the building, the Developer shall provide to the Development Officer written certification from a professional surveyor that both the proposed development and completed building does not violate section 26B of the Halifax Peninsula Land Use By-law.

2.11 Wind Mitigation Measures

2.11.1 Prior to the issuance of a development permit for construction, the Developer shall undertake wind tunnel testing of the development by a qualified professional experienced in wind engineering and submit a report to the Development Officer that:

- (a) Confirms/ quantifies the expected wind comfort and safety conditions; and
- (b) Where necessary, outlines proposed wind mitigation measures to achieve accepted industry standards for pedestrian wind comfort and safety.

2.11.2 Appropriate mitigation measures / solutions shall be approved by the Development Officer prior to the issuance of a development permit for construction, except those which, in the opinion of the Development Officer, involve a substantive change to a portion of the building or site plan. In these instances, such measures shall be considered by Council as per Section 5.2 (g) prior to the issuance of a development permit for construction.

- 2.11.3 Mitigation measures / solutions shall be shown on the building plans submitted for development permit for construction and be completed prior to the issuance of an occupancy permit.

2.12 Parking

- 2.12.1 Notwithstanding Section 2.1 (Schedules), the provision of a parking level (P3) below the Granville Street level (Schedule B) shall be at the discretion of the Developer.

2.13 Maintenance

- 2.13.1 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.

PART 3: STREETS AND MUNICIPAL SERVICES

3.1 General Provisions

- 3.1.1 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.
- 3.1.2 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.

3.2 Proposed Encroachments

- 3.2.1 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 4: ENVIRONMENTAL PROTECTION MEASURES

4.1 Archaeological Monitoring and Protection

- 4.1.1 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.

4.2 Sulphide Bearing Materials

- 4.2.1 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 5: AMENDMENTS

5.1 Substantive Amendments

Amendments to any matters not identified under Section 5.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

5.2 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council (for greater certainty, these items do not include changes which, in the opinion of the Development Officer, are generally in conformance with the plans attached as Schedules B-O):

- a) changes to the requirements prior to approval in section 2.2;
- b) changes to the architectural requirements and exterior architectural appearance, materials or colours as detailed in section 2.4 and corresponding schedules;
- c) changes to the landscaping requirements as detailed in section 2.5;
- d) changes to the land uses permitted by Section 2.3 or the ground floor uses in Section 2.6;
- e) changes to the sign requirements (Section 2.7);
- f) building lighting / illumination which does not comply with Section 2.8;
- g) wind mitigation measures / solutions which involve a substantive change to a portion of the building or site plan pursuant to Section 2.11;
- h) changes to the functional elements as detailed in section 2.9.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 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 at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

6.2.1 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.

6.2.2 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).

6.3 Commencement of Development

6.3.1 In the event that development on the Lands has not commenced within three years from the date of execution of this Agreement, 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.

6.3.2 For the purpose of clause 6.3.1, commencement of development shall mean the issuance of construction permits and the commencement of work for the parking levels shown on the Schedules.

6.4 Completion of Development

6.4.1 The development shall be substantially complete within six years of the date of execution of this Agreement.

6.4.2 Upon the completion of the development or portions thereof, or after six years from the date of execution 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; or
- (b) discharge this Agreement on the condition that for those portions of the development which are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the planning documents that are in effect at the time of the discharge.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 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.

7.2 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 (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; 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 _____, 20____.

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 DEVELOPER NAME)

Per: _____

Per: _____

=====

**HALIFAX REGIONAL
MUNICIPALITY**

Per: _____

Mayor

Per: _____

Municipal Clerk

