

**Item No. 11.1.2**  
**Halifax Regional Council**  
**October 4, 2011**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

Original signed by



Richard Butts, Chief Administrative Officer

Original Signed by



Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** September 16, 2011

**SUBJECT:** **Encroachment Agreement – Halkirk Properties, the Historic Brewery Property**

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**ORIGIN**

Application by Greenwood Lane Inc. on behalf of Halkirk Properties Ltd.

**RECOMMENDATION**

It is recommended that Halifax Regional Council to approve the attached Encroachment Agreement to allow Halkirk Properties Ltd. to install five window wells within the sidewalk area of Lower Water Street.

## **BACKGROUND**

Halkirk Properties proposes to upgrade the exterior of the Brewery Property located at 1496 Lower Water Street in conjunction with internal renovations currently taking place on the property. The proposal includes exposing five pre-existing windows located at the sidewalk level along the property line and create a landscaped area between the windows. This would require the construction of five window wells, approximately 1.0 metre deep by 0.71 metres wide within the sidewalk area of the HRM right-of-way.

As outlined in the Encroachment By-Law E-200, permanent encroachments located upon and under the HRM street right-of-way require an encroachment agreement, as well as authorization from Regional Council. The proposed window wells and associated landscaped area is a type of encroachment which requires approval from Regional Council.

## **DISCUSSION**

Lower Water Street has been recognized as a significant transportation route by Council since the early 1900's, when the Council of the day dedicated an 18 metres wide right-of-way to preserve the area for future transportation and service delivery needs.

The continued redevelopment of Lower Water Street and the surrounding area including Morris Street, NSP's new head office, Halifax Seaport & Farmers Market, as well as the undeveloped WDCL lands, will continue to change the transportation needs of the area for both pedestrians and motorized vehicles. The recent approval of Lower Water Street to one-way north bound provides more flexibility in the use of the right of way.

Therefore, recognizing that the proposed encroachment will restore the historic appearance of the building, as well as making improvements to the streetscaping in this area, staff recommend that the proposed encroachment be approved as long as it does not extend further than 0.46 metres into the sidewalk and does not include the proposed granite curb. This will ensure that there is a minimum clear sidewalk area of 2.08 metres for safe pedestrian movement, as well as sufficient area for snow and ice maintenance of the area.

While this distance is minimally reduced from the applicant's requested encroachment, staff feel that this compromised amount is necessary to not impact HRM's ability to provide sufficient area for winter maintenance, active transportation or improved streetscaping.

The area of the proposed encroachment will be a total of 5.9 square metres. In accordance with By-Law E-200, the encroachment will be subject to an annual encroachment fee of \$59 (\$10.00 per square metre).

If Council chooses to allow the encroachment, the attached draft encroachment would apply which includes the following:

1. Construction and maintenance of the encroachments must comply with Streets By-Law S-300.

2. If requested by HRM, the building encroachments would be removed by Halkirk Properties Ltd. at their expense.
3. Record information will be provided in paper and electronic format to HRM.

The encroachment agreement would be effective concurrently with an approved Streets and Services Permit, including a revised site plan based on staff recommendations for the Halkirk Properties.

### **BUDGET IMPLICATIONS**

Should regional Council not approve the encroachment, there would be no budget implications. However, if Regional Council chose to approve the encroachment, cost centre R112-4912, Right of Way Approval – Signs and Encroachments, will be used to record this new annual revenue.

### **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

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

### **ALTERNATIVES**

1. Council could approve the encroachment agreement as proposed. Staff recommends this option for the reasons outlined in the report. The recommended option represents a fair compromise to Halkirk Properties Ltd.
2. Council could choose to approve the full encroachment as requested by the applicant. Staff does not recommend this alternative since the encroachment would reduce the sidewalk width to 1.7 metres which does not meet HRM's minimum sidewalk standard and would comprise maintenance and use of the sidewalk.
3. Council could choose not to approve the encroachment agreement. Staff does not recommend this option as the encroachment would restore the historical appearance of the building and improve the streetscaping of the area.

### **ATTACHMENTS**

Attachment A: Draft Encroachment Agreement

Attachment B: Site Plan

Attachment C: Encroachment Request by Greenwood Lane Inc.

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: Ashley Blissett, Development Engineer, 490-6848

Report Approved by: \_\_\_\_\_  
Denise Schofield, Manager Development Engineering, 490-6252

Report Approved by: \_\_\_\_\_  
Taso Koutoulakis, Acting Manager Traffic & Right-of-Way 490-4816

Report Approved by: \_\_\_\_\_  
Ken Reashor, P.Eng., Director, Transportation and Public Works, 490-4855

Financial Approval by: \_\_\_\_\_  
James Cooke, CGA, Director of Finance/CFO, 490-6308

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## **Attachment A: Draft Encroachment Agreement**

This **Encroachment License Agreement** made this       day of       , 2011

BETWEEN:

### **HALIFAX REGIONAL MUNICIPALITY**

Of the One Part

and

### **Halkirk Properties Ltd.**

Of the Other Part

## **Recitals**

(1) Whereas Halkirk Properties Ltd. wishes to install five window wells within the public right-of-way in Lower Water Street, Halifax for private use;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on \_\_\_\_\_, 2011, the Halifax Regional Municipality agreed to give Halkirk Properties Ltd. an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-Law E-200, being the Encroachment By-law, and as contained in this license agreement.

## **Definitions**

1. In this agreement, unless the context otherwise requires:

- (a) “HRM” means the Halifax Regional Municipality
- (b) “Engineer” means the Engineer as defined by the Halifax Regional Municipality Charter; and
- (c) “Halkirk” means Halkirk Properties Ltd.

**License**

2. Subject to the terms of this encroachment license agreement, HRM hereby grants to Halkirk the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Lower Water Street, Halifax identified on Schedule "A" to install and maintain the window wells.

**Relocation**

3. If necessary for the municipal purposes, the window wells must be relocated within the street if requested by HRM, and such relocation will be at the expense of Halkirk. Should Halkirk wish to relocate the window wells, such shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld and said relocation shall be at the expense of Halkirk.

**Permits**

4. (1) Halkirk agrees to comply with all municipal by-laws including the Streets By-Law, S-300, as amended from time to time, for the original construction of the works and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile stamped by a professional engineer of the proposed window wells, as well as a traffic control plan.

(3) The final location of the window wells shall be subject to the approval of the Engineer.

(4) For the purposes of the construction of the original works, Halkirk agrees to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia, and to file with the Engineer a written undertaking stating that the professional engineer had been engaged by Halkirk to supervise and set out the work, that the work will be done in accordance with the approved plans, and that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the original works, Halkirk agrees to arrange a preconstruction meeting with HRM Staff.

(6) In addition to meeting the requirements of Streets By-Law S-300, for the purposes of the construction of the original works, Halkirk agrees to deposit with HRM performance security, acceptable to the Engineer, in the estimated amount of the cost of restoring the

municipal infrastructure affected by the project, or in the minimum amount of \$1000.00, to be valid for a period for two years form the date of the acceptance of said works.

(7) For the purposes of the construction of original works Halkirk shall provide HRM with a certificate from a professional engineer certifying that all works are completed according to the approved drawings, any applicable municipal services specifications, standard drawings and approved changes.

### **Record Drawings**

5. Halkirk shall provide a copy of the record drawings immediately upon completion of the work, and immediately upon completion of any relocation, both in hard copy and electronic format compatible with the HRM Geographic Information System (GIS).

### **Indemnity**

6. Halkirk agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the window wells however caused, except to the extent that the loss arises out of the gross negligence of HRM.

### **Fees**

7. Halkirk, agrees to pay the fees set out in Encroachment By-Law E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the window wells is 5.9 square metres, at a rate of \$1.00 per 0.1 square metres, resulting in an annual fee of \$59.00 to be paid by March 1<sup>st</sup> annually.

### **Occupational Health & Safety Act**

8. Halkirk agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically Halkirk agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

### **Termination**

9. (1) Either party may terminate this license agreement at any time.

(2) Upon termination of the license agreement, Halkirk shall at HRM's option either:

(a) remove the window wells and restore the surface of Lower Water Street;

or

(b) abandon all claim to title of the window wells to HRM.

**Notices**

10. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality  
Director of Public Works and Transportation  
PO Box 1749  
Halifax, NS B3J 3A5

and

Halkirk Properties Ltd.  
1496 Lower Water Street  
Halifax, NS B3J 1R9

Legal notices in respect of HRM must be given in compliance with the Halifax Regional Municipality Charter.

11. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

**HALIFAX REGIONAL MUNICIPALITY**

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Mayor Peter Kelly

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Municipal Clerk

**Halkirk Properties Ltd.**

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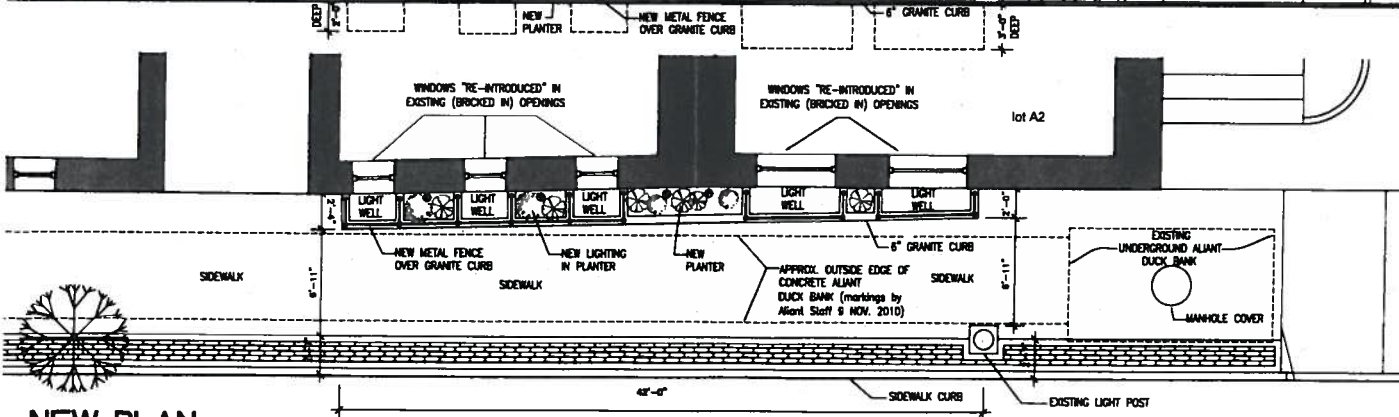
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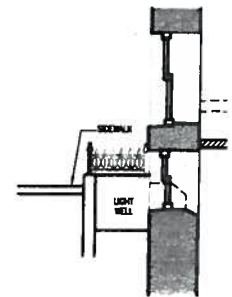
**NEW ELEVATION**

SCALE: 1/8"=1'-0"



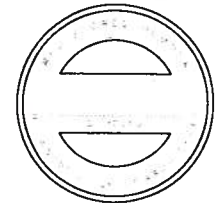
**NEW PLAN**

SCALE: 1/8"=1'-0"



**LIGHT WELL**

SCALE: 1/4"=1'-0"



PROJECT NORTH:



**Greenwood Lane**

**Duffus  
Romans  
Kundzins  
Rounsefell**  
ARCHITECTS, LIMITED  
HALIFAX, N.S. B3A 2B0T1A

**THE BREWERY**  
1496 LOWER WATER STREET

Date  
**24 February 2010**

Scale  
**1/8"=1'-0"**

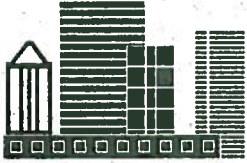
Drawing No  
**A1**

Revision  
**1**

PID # 0003723

Encroachment  
Agreement -  
Halkirk Properties  
Attachment B

(A)



1496 Lower Water Street  
Halifax, N.S.  
B3J 1R9

Telephone  
902 423-2279  
Facsimile  
902 423-2372

# GREENWOOD LANE INC.

Encroachment  
Agreement -  
Halkirk Properties

Attachment C

February 24, 2011

Ms. Ashley Blissett, P.Eng.  
Development Engineer  
Halifax Regional Municipality,  
Development Engineering Community Development  
Halifax, Nova Scotia

Dear Ms. Blissett:

**Re: Non-Substantial Site Plan Approval of Restoration of Pre-Existing Window Wells / Request for Encroachment Licenses – The Brewery Property, Lower Water Street, Halifax**

Further to our meeting of February 23, 2011 we are pleased to present on behalf of Halkirk Properties Limited, the following background information pertaining to the above referenced matter. We wish to carry out not only an improvement along the sidewalk level of the Historic Brewery by restoring those window areas as shown on the attached plan (A) but to also enhance the retail environment of the Brewery and downtown Halifax.

The proposed work involves the creation of five window wells that will enable the exposure of five pre-existing windows below street level. The wells will be fenced with ornamental fencing in accordance with building code requirements.

We ask the Halifax Regional Municipality City Council to accept our request for the following reasons;

**(1) Restoration of Existing Window Areas**

These window openings were closed many years ago with masonry products. The original exterior window frame structures are currently in place. It is our desire to replace the masonry filler with new window inserts that are sensitive to the historic nature of the Brewery property. To properly expose these original windows, new window wells will be required to be excavated along the sidewalk area of Lower Water Street. These wells will be designed by our architect complete with period designed railings. (see attached plan - A) The resulting openings will bring in natural light to the lower floor of the Brewery.

Commercial Real Estate

Leasing - Sales

Property Management  
Commercial - Residential

Design - Build Development

Appraisals - Consultants

(2) Interior Improvement – Patagonia Shop Tenancy

The creation of these window wells will greatly enhance the usable area of the lower mall of the Brewery property. Halkirk Properties have negotiated a lease with Patagonia Shops, commencing August 2011, to occupy both the main level as well as the lower level, joined inside by a staircase. Natural lighting will be a marked improvement to the retail environment of this lower level. The significance of this retailer will be a wonderful addition to the Brewery Square attracting additional shoppers to the complex as well as to the Historic Farmers Market.

This will be the first Patagonia Store east of Toronto, there are only three others in Canada. Patagonia is one of the “greenest” companies on earth with initiatives to reduce carbon footprints and planet preservation (pledging 1% of sales to the preservation and restoration of the natural environment) working to protect undomesticated lands and water.

From their website:

***Our definition of quality includes a mandate for building products and working with processes that cause the least harm to the environment. We evaluate raw materials, invest in innovative technologies, rigorously police our waste and use a portion of our sales to support groups working to make a real difference.***

(3) Exterior Enhancement

The proposed window treatments we believe will bring an historic enhancement to the exterior of the property. We have attached, besides the architectural plan, a period photograph depicting the location of the windows we wish to expose. (attached – B)

(4) Precedent

We have also included pictures of a similar window enhancement at the Old Triangle Restaurant in downtown Halifax. (attached – C) All five windows at the Brewery Market will be treated in this manner.

Halkirk Properties Limited continues to enhance and improve the historic nature of the Brewery property. Our on-going re-development and restoration of the property will continue to contribute to the historic nature of this unique part of downtown Halifax.

It is our hope that Council will see the overall benefit of this modification and tenancy and approve of the requested encroachment license.

Yours Truly,  
GREENWOOD LANE INC.  
(as agents for Halkirk Properties)



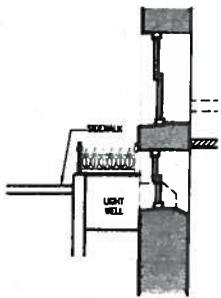
William Greenwood, FRI, RPA  
Principal





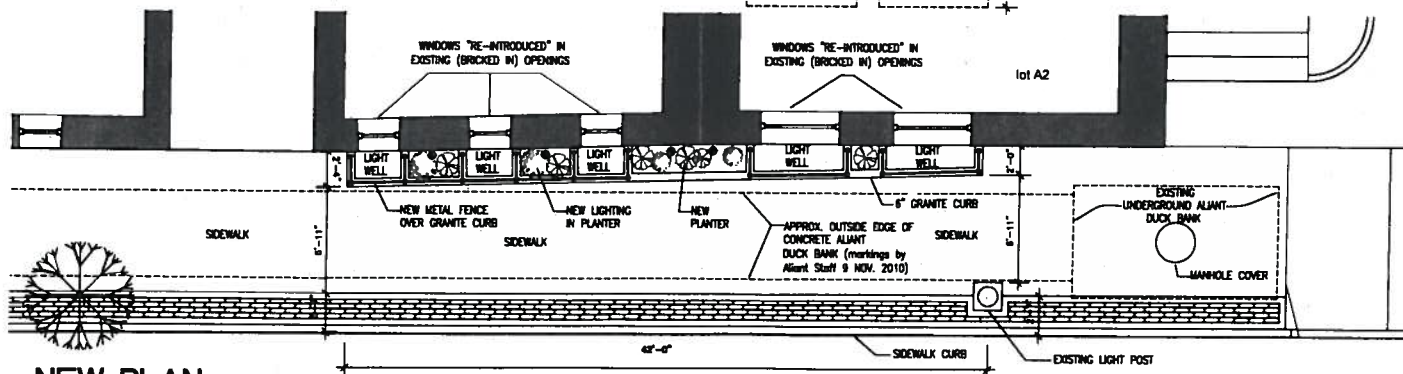
**NEW ELEVATION**

SCALE: 1/8"=1'-0"



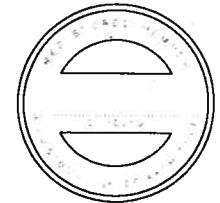
**LIGHT WELL**

SCALE: 1/4"=1'-0"



**NEW PLAN**

SCALE: 1/8"=1'-0"



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**Duffus  
Romans  
Kundzins  
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ARCHITECTS LIMITED  
HALIFAX, NOVA SCOTIA

**THE BREWERY**  
1496 LOWER WATER STREET

Date  
**24 February 2010**

Scale  
**1/8"=1'-0"**

Drawing No	Revision
<b>A1</b>	<b>1</b>

PID # 0003723

(A)





(B)



