



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 13.1.2
Halifax and West Community Council
May 7, 2019

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY:

Steve Higgins, Acting Director of Planning and Development

Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: March 13, 2019

SUBJECT: **Case 22166: Discharge of Development Agreement on lands at 1749-1759
Vernon Street, Halifax.**

ORIGIN

Application by EDM Planning Services Ltd., on behalf of property owner ERZ Properties Limited.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Approve, by resolution, the proposed Discharging Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharging 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

EDM Planning Services Ltd., on behalf of property owner ERZ Properties Limited, has applied to discharge a development agreement (municipal case 17371) which permitted an increase in the volume of a structure containing a non-conforming six (6) unit apartment house at 1749, 1751, 1753, 1757, and 1759 Vernon Street, Halifax.

Subject Site	1749, 1751, 1753, 1757, and 1759 Vernon Street, Halifax (PID's 00156869, 00156877, and 40390083)
Location	East side of Vernon Street between Cedar Street and Jubilee Road
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	MDR (Medium Density Residential), Peninsula Centre Secondary Plan, of the Halifax Municipal Planning Strategy
Zoning (Map 2)	R-2 (General Residential Zone) in the Halifax Peninsula Land Use By-law
Size of Site	Approximately 780 sq. m (8,400 sq. ft.)
Street Frontage	Approximately 30.5m (100 ft.)
Current Land Use(s)	Multi-unit residential building (6 units)
Surrounding Use(s)	Residential

Proposal Details

The applicant has requested to discharge the development agreement that permitted the expansion of the six (6) unit apartment building at 1749-1759 Vernon Street (Attachment A). The former Peninsula Community Council approved a development agreement under case #17371 on September 10, 2012. The original agreement has been amended twice since registration. Once on September 15, 2015 for an 18-month extension for construction and commencement (municipal case 19809) and again on September 12, 2017 for an additional two-year extension for construction and commencement (municipal case 21191).

Policy Context

Part VIII, Section 244 of the *Halifax Regional Municipality Charter* (the Charter) allows Council to discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner:

“Discharge of development agreement

- 244** (1) *A development agreement is in effect until discharged by Council*
(2) *The Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner.*
(3) *After a development agreement is discharged, the land is subject to the land-use by-law. 2008, c. 39, s. 244”*

The Charter does not require a public hearing for the discharge of an agreement or a portion thereof. A Community Council may discharge a development agreement by resolution.

The development has not been completed pursuant to the approved agreement. In addition, the new owner has indicated they have no intent to do so and they have requested the agreement be discharged. Under these circumstances, the development agreement can be discharged in accordance with the *Halifax Regional Municipality Charter* Part VIII, Clause 244(2).

Should Halifax and West Community Council agree to discharge the development agreement, the R-2 Zone standards in the Halifax Peninsula Land Use By-law will regulate future development on the subject site. The existing 6-unit apartment building will be regulated as a non-conforming use subject to the limitations in the relevant sections of the HRM Charter.

History of the Existing Development Agreement

When the development agreement was considered by the former Peninsula Community Council in 2012, the subject site was zoned R-2 under the Halifax Peninsula Land Use By-law and designated MDR (Medium Density Residential) under the Peninsula Centre Detailed Plan Area. Under the R-2 Zone, the maximum number of dwelling units would be four (4). However, the six-unit dwelling pre-dated the effective date of the Halifax Peninsula Land Use By-law and was considered to be a non-conforming use as set out in the HRM Charter.

The previous owner requested a development agreement to expand the volume of the non-conforming use by replacing the existing flat roof with a pitched roof. The proposal also requested to create new habitable floor space within the pitched roof to allow re-configuration of the existing 6 units to provide larger family sized units. No additional units were proposed.

The Land Use By-law allowed volume additions to non-conforming uses but, in the case of this building, changes were limited to roof pitch alterations under six feet in height and no additional habitable space was permitted. Section 3.14 of the Halifax Municipal Planning Strategy allows Council to consider development agreements to allow structures containing non-conforming uses to be altered or expanded beyond the above referenced limitations. The development agreement allowing the proposed alterations was approved on September 10, 2012.

On September 15, 2015 the Halifax and West Community Council approved a time extension under Municipal Case Number 19809 to extend the commencement and completion dates by eighteen (18) months because the property owner had not been able to proceed with the project due to medical reasons.

On September 12, 2017 the Halifax and West Community Council approved an additional time extension under Municipal Case Number 21191 to extend the commencement and completion dates by a further two (2) years because the property owner had experienced unexpected personal matters.

In December of 2018, ERZ Properties Limited purchased the subject lands. They have stated they do not intend to expand the volume of the existing building to allow for additional habitable space and have requested the development agreement be discharged.

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 providing information and seeking comments through the HRM website and signage posted on the subject site.

Staff have not received any comments from the public relating to this application, and there is no requirement for a public hearing for this application.

DISCUSSION

Discharging the agreement will result in the application of Halifax Peninsula Land Use By-law in the same manner as it was applied prior to the approval of the development agreement in 2012. The existing apartment building would remain as a non-conforming use and impacts on the subject property and surrounding community resulting from the discharge will be extremely minimal if any.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the request to discharge the existing development agreement is reasonably consistent with the intent of the Halifax MPS. The proposed discharge is also explicitly provided for in both the HRM Charter and the approved development agreement.

Given the current owners have no intention to complete the project as described in the development agreement, staff recommend that the Halifax and West Community Council approve the proposed discharging agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2019-2020 budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of discharging the development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to refuse to discharge the existing development agreement and therefore, development on the property would remain subject to the conditions of the agreement. A decision of Council to refuse to discharge a development agreement is appealable to the Nova Scotia Utility and Review Board as per Section 262 of the HRM Charter.

ATTACHMENTS

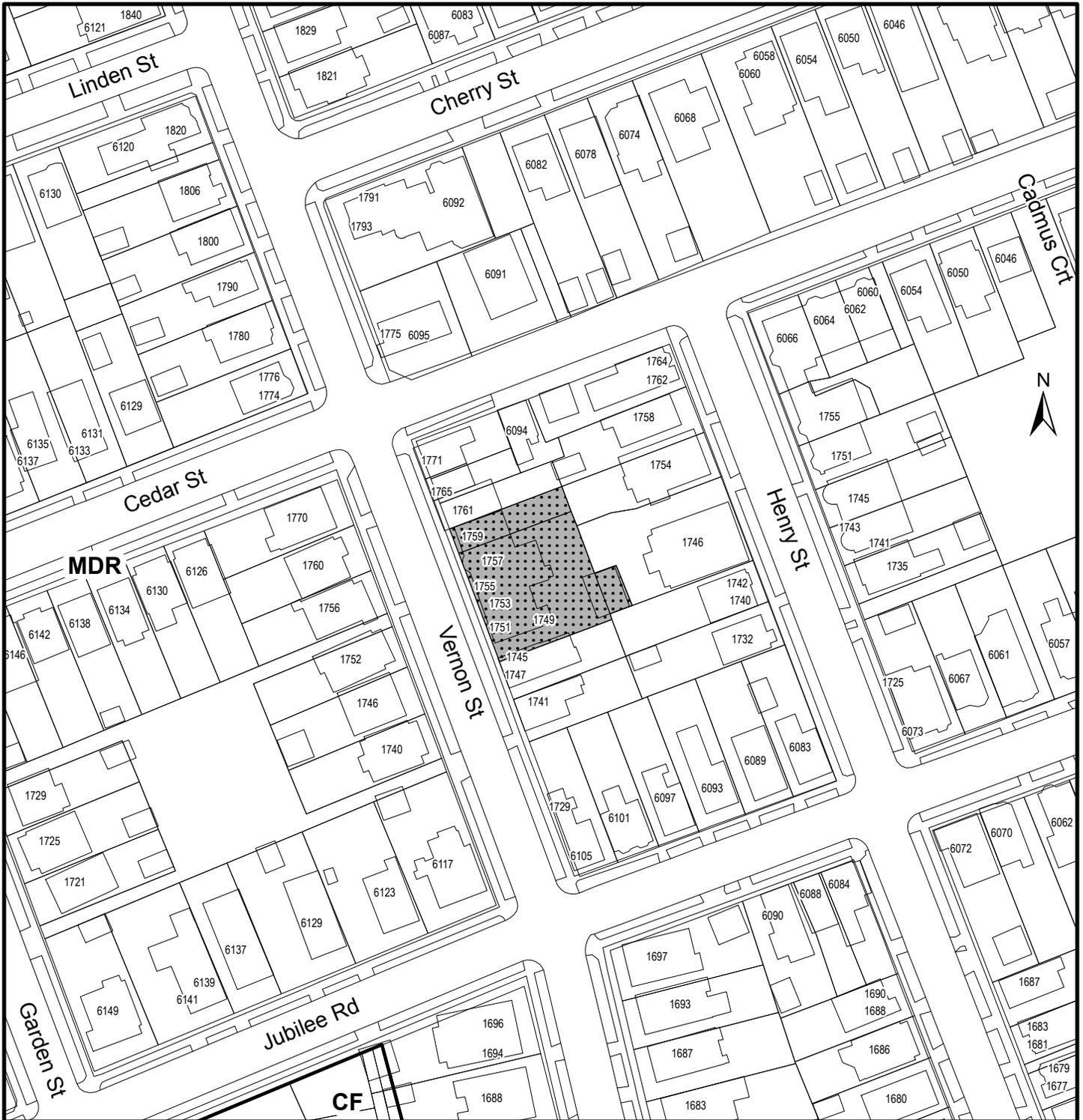
Map 1:	Generalized Future Land Use
Map 2:	Zoning and Notification Area
Attachment A:	Discharging Development Agreement
Attachment B:	Original Development Agreement

A copy of this report can be obtained online at or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Cameron Robertson, Planner II, Current Planning, 902.490.7175

Original Signed

Report Approved by: _____
Carl Purvis, Urban & Rural Planning Applications Program Manager, 902.490.4797



Map 1 - Generalized Future Land Use
 1749-1759 Vernon Street
 Halifax

HALIFAX

 Subject Properties

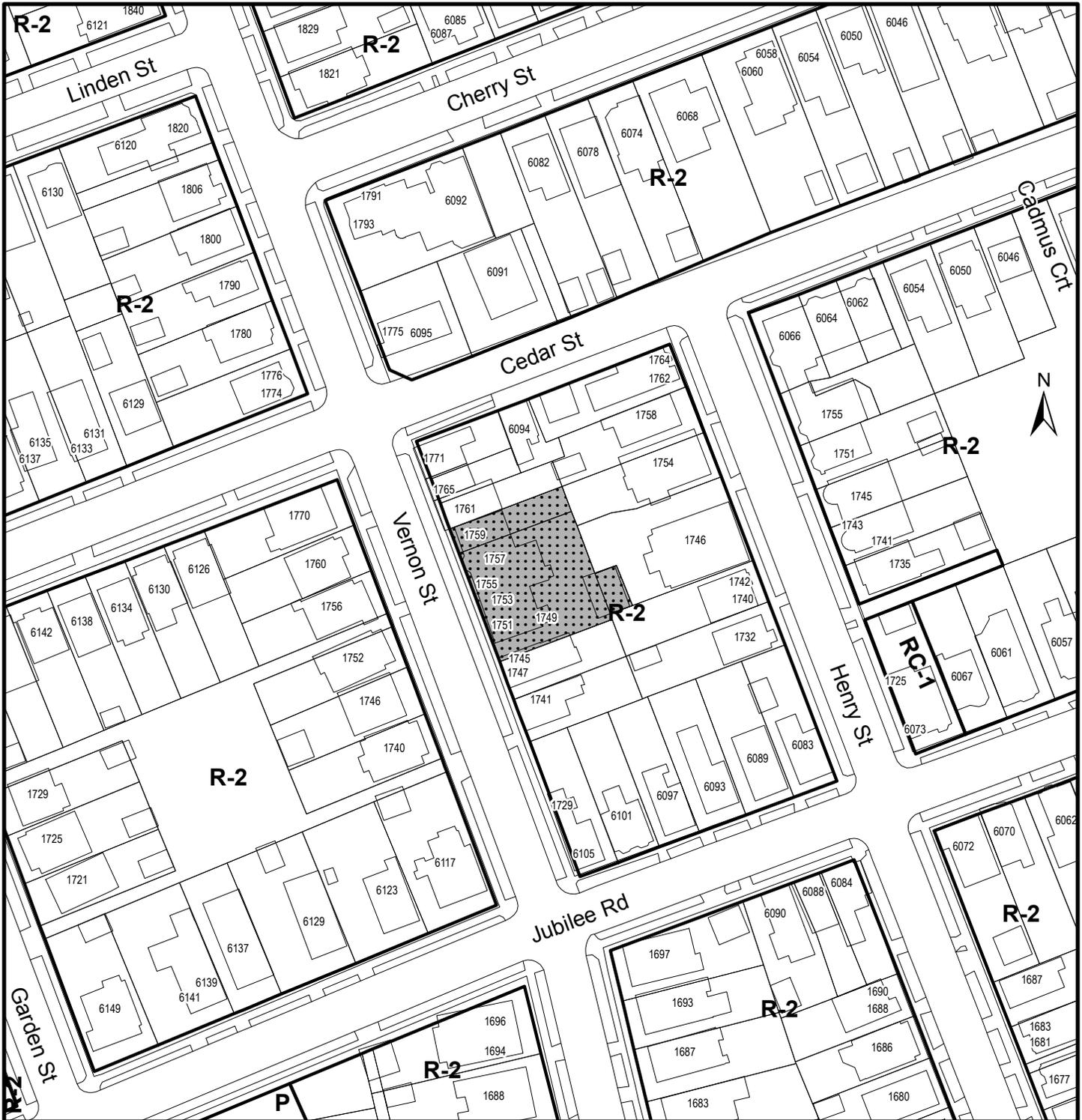
Designation
 MDR Medium Density Residential
 CF Community Facilities



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Halifax Plan Area
 Peninsula North Secondary Plan Area



Map 2 - Zoning
 1749-1759 Vernon Street
 Halifax

HALIFAX

 Subject Properties

Zone
 R-2 General Residential
 RC-1 Neighbourhood Commercial
 P Park and Institutional



Halifax Peninsula
 Land Use By-Law Area

This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.
 The accuracy of any representation on this plan is not guaranteed.

Attachment A: Discharging Development Agreement

THIS DISCHARGING AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

ERZ PROPERTIES 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 1749, 1751, 1753, 1757, and 1759 Vernon Street, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the former Peninsula Community Council of the Halifax Regional Municipality approved an application to enter into a Development Agreement to allow for an increase in the volume of a structure containing a non-conforming six (6) unit apartment house on September 10, 2012 (Municipal Case 17371), which said Development Agreement was registered on February 13, 2013 at the Land Registration Office as Document Number 102476869 (Hereinafter called the "Original Agreement"), and which applies to the Lands;

AND WHEREAS the Halifax and West Community Council of the Halifax Regional Municipality approved an application amend the Original Agreement to allow for an 18 month extension to the dates of construction commencement and completion of the development on September 15, 2015 (Municipal Case 19809), which said Amending Agreement was registered on December 30, 2015 at the Land Registration Office as Document Number 108323743 (hereinafter called the "First Amending Agreement"), and which applies to the Lands;

AND WHEREAS the Halifax and West Community Council of the Halifax Regional Municipality approved an application amend the Original Agreement to allow for a two (2) year extension to the dates of construction commencement and completion of the development on September 12, 2017 (Municipal Case 21191), which said Amending Agreement was registered on January 18, 2018 at the Land Registration Office as Document Number 112037826 (hereinafter called the "Second Amending Agreement"), and which applies to the Lands;

AND WHEREAS the Original Agreement, the First Amending Agreement, and Second Amending Agreement together comprise the Existing Agreement (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested that the Existing Agreement be discharged from the Lands;

AND WHEREAS, pursuant to the procedures and requirements contained in the *Halifax Regional Municipality Charter*, the Halifax and West Community Council approved this request by resolution at a meeting held on **[INSERT - date]**, referenced as Municipal Case Number 22166;

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

1. The Existing Agreement is hereby discharged as it applies to the Lands and shall no longer have any force or effect.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Land Use By-law for Halifax Peninsula, as amended from time to time.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

ERZ PROPERTIES LIMITED

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

Witness

Per: _____

MAYOR

Witness

Per: _____

MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Kevin Arjoon, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

Form 24

Purpose: to change the registered interest, benefits or burdens

(Instrument code: 450)

(If change(s) requested relate(s) to one or more of the following and no other interests are being added or removed on this form: manner of tenure, description of manner of tenure, non-resident status, parcel access or NSFLB occupant. Note: This form cannot be used to correct an error in a parcel register).

(Instrument code: 451)

(Change to existing servient or dominant tenement PID number in a parcel register as a result of subdivision or consolidation. Note: This form cannot be used to correct an error in a parcel register)

For Office Use

Registration district: Halifax
 Submitter's user number: 500001928
 Submitter's name: Peter A. Lohnes

HALIFAX COUNTY LAND REGISTRATION OFFICE
 certify that this document was registered or recorded
 as shown here.
 Kim MacKay, Registrar

102476869 LRD ROD
Document #
FEB 13 2013 9:11 BC
MM DD YYYY Time

In the matter of Parcel Identification Number (PID)

PID	00156877
PID	00156869
PID	40280083

(Expand box for additional PIDs, maximum 9 PIDs per form)

The following additional forms are being submitted simultaneously with this form and relate to the attached document (check appropriate boxes, if applicable):

- Form 24(s)
- Form 8A(s)

Additional information (check appropriate boxes, if applicable):

- This Form 24 creates or is part of a subdivision or consolidation.
- This Form 24 is a municipal or provincial street or road transfer.
- This Form 24 is adding a corresponding benefit or burden as a result of an AFR of another parcel.

Power of attorney (Note: completion of this section is mandatory)

- The attached document is signed by attorney for a person under a power of attorney, and the power of attorney is:
 - recorded in the attorney roll
 - recorded in the parcel register
 - incorporated in the document

OR

- X No power of attorney applies to this document

May 4, 2009

This form is submitted to make the changes to the registered interests, or benefits or burdens, and other related information, in the above-noted parcel register(s), as set out below.

The registered interests and related information are to be changed as follows: N/A

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) if applicable</i>	
Mailing address of interest holder to be added (if applicable)	
Manner of tenure to be removed (if applicable)	
Manner of tenure to be added (if applicable)	
Description of mixture of tenants in common and joint tenancy (if applicable)	
Access type to be removed (if applicable)	
Access type to be added (if applicable)	
Percentage or share of interest held (for use with tenant in common interests)	
Non-resident (to qualified solicitor's information and belief) (Yes/No?)	
Reference to related instrument in parcel register (if applicable)	
Reason for removal of interest (for use only when interest is being removed by operation of law and no document is attached) <i>Instrument code: 443</i>	

The following tenant in common interests that appear in the section of the parcel register(s) labelled "Tenants in Common not registered pursuant to the *Land Registration Act*" are to be removed because the interests are being registered (*insert names to be removed*): N/A

I have searched the judgment roll with respect to this revision of the registered interest and have determined that it is appropriate to add the following judgment(s) or judgment-related documents to the parcel register, in accordance with the *Land Registration Act* and *Land Registration Administration Regulations*: N/A

May 4, 2009

Instrument type	
Interest holder name and type to be added	
Interest holder mailing address	
Judgment Roll reference	

The following benefits are to be added and/or removed in the parcel register(s):
 (Note: An amending PDCA is required if the changes being made to the benefit section are not currently reflected in the description in the parcel register). N/A

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Servient tenement parcel(s) (list all affected PIDs):	
Reference to related instrument in names-based roll/parcel register (if applicable)	
Reason for removal of interest (for use only when interest is being removed by operation of law) <i>Instrument code: 443</i>	

The following burdens are to be added in the parcel register(s):
 (Note: An amending PDCA is required if the changes being made to the burden section are not currently reflected in the description in the parcel register).

Instrument type	Agreement re Use of Land
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	Halifax Regional Municipality Party to Agreement (Burden)
Mailing address of interest holder to be added (if applicable)	PO Box 1749, Halifax, NS B3J 3A5
Reference to related instrument in names-based roll/parcel register (if applicable)	

May 4, 2009

Reason for removal of interest (for use only when interest is being removed by operation of law) Instrument code: 443	
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The following recorded interests are to be added and/or removed in the parcel register: N/A

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Reference to related instrument in names-based roll/parcel register (if applicable)	
Reason for removal of interest (for use only when interest is being removed by operation of law) Instrument code: 443	

The textual qualifications are to be changed as follows: N/A

Textual qualification on title to be removed (insert any existing textual description being changed, added to or altered in any way)	
Textual qualification on title to be added (insert replacement textual qualification)	
Reason for change to textual qualification (for use only when no document is attached) Instrument code: 838	

The following information about the occupier of the parcel, which is owned by the Nova Scotia Farm Loan Board, is to be changed: N/A

Name and mailing address of occupier to be removed	
Name and mailing address of occupier to be added	

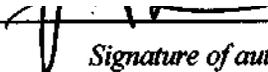
May 4, 2009

Certificate of Legal Effect:

I certify that, in my professional opinion, it is appropriate to make the changes to the parcel register(s) as instructed on this form.

Dated at Halifax, in the County of Halifax Province of Nova Scotia, on
November 28, 2012.

Original Signed



Signature of authorized lawyer

Name: Peter A. Lohnes

Address: 301-6265 Quinpool Rd., Halifax NS
B3L 1A4

Phone: 902-453-0910

E-mail: office@lohneslaw.ca

Fax: 902-484-5695

- This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

May 4, 2009

THIS DEVELOPMENT AGREEMENT made this 4th day of January 2012, 2013

BETWEEN:

JOHN SIPOS AND S MELISSA SANFORD
individuals, in the County of Hants, in the Province
of Nova Scotia (hereinafter called the "Developer")

APPROVED
AS TO FORM

OF THE FIRST PART

Original Signed
Municipal Council

- and -

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

OF THE SECOND PART Original Signed

WHEREAS the Developer is the registered owner of certain lands located at 1749, 1751, 1753, 1757, and 1759 Vernon 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 an increase in the volume of a structure containing a non-conforming six (6) unit apartment house on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Implementation Policy 3.14 of the Halifax Municipal Planning Strategy and Section 99(4) of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Peninsula Community Council for the Municipality approved this request at a meeting held on September, 10, 2012, referenced as Municipal Case Number 17371.

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, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Halifax Peninsula 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/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: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

2.2 Definitions Specific to this Agreement

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

- (a) **“Permeable Hard Surface”** means a type of hard surface that allows rainfall to percolate into an underlying permeable base and includes, but is not limited to, paving blocks, cobble stones, and grid systems filled with sand, gravel, or living plants (groundcover).

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 17371:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Main Building – West Elevation
Schedule D	Main Building – South Elevation
Schedule E	Main Building – North Elevation
Schedule F	Main Building – East Elevation
Schedule G	Accessory Building – Floor Plan
Schedule H	Accessory Building – West Elevation

- Schedule I Accessory Building – South Elevation
- Schedule J Accessory Building – North Elevation
- Schedule K Accessory Building – East Elevation

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall provide the following to the Development Officer:
- (a) A detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with Subsection 5.1 (a); and
 - (b) A detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer in accordance with Subsection 5.1 (b).
- 3.2.2 Prior to the issuance of a Construction Permit, the Developer shall provide the following to the Development Officer:
- (a) An approved subdivision plan in accordance with Subsection 3.5.1 of this Agreement. This subdivision plan shall demonstrate the Lands have been consolidated into one lot; and
 - (b) A Landscape Plan prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) in accordance with Section 3.8 of this Agreement
- 3.2.3 Prior to the issuance of the first Occupancy Permit, the Developer shall provide to the Development Officer:
- (a) Certification from a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) in accordance with Section 3.8 of this Agreement indicating that the Developer has complied with landscaping required pursuant to this Agreement, or Security in accordance with Subsection 3.8.4; and
 - (b) Certification from a qualified professional indicating that the Developer has complied with the lighting (Section 3.7) and fencing (Section 3.11) requirements of this Agreement.
- 3.2.4 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.

3.3 General Description of Land Use

3.3.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) One (1) Apartment House containing a maximum of six (6) dwelling units; and
- (b) Accessory Uses and one (1) Accessory Building.

3.3.2 Two (2) dwelling units shall contain no less than 1,000 square feet of gross floor area. All other dwelling units shall contain no less than 1,500 square feet of gross floor area.

3.3.3 No dwelling unit shall contain less than two (2) bedrooms or more than three (3) bedrooms.

3.4 Siting and Architectural Requirements

3.4.1 The location, size, and design of the Apartment House shall be in conformance with Schedules B through F of this Agreement.

3.4.2 The location, size, and design of the accessory building shall be in conformance with Schedules B and G through K of this Agreement.

3.4.3 The exterior of the apartment house and accessory building shall be finished with the materials shown on Schedules C through F and H through K, respectively, of this Agreement.

3.5 SUBDIVISION OF THE LANDS

3.5.1 The Lands shall be consolidated into one lot. No Construction Permit shall be issued until subdivision approval is provided by the Municipality, and the approved subdivision has been recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia.

3.5.2 Provided the terms of this Agreement have been fulfilled, the Municipality shall consent to the registration of a condominium on the Lands through the Condominium Act.

3.6 Access, Circulation and Parking (Vehicle and Bicycle)

3.6.1 Vehicular access to the Lands shall be provided by the driveway shown on Schedule B of this Agreement.

3.6.2 Vehicular parking shall be provided to the rear of the apartment house as shown on Schedule B of this Agreement. Four (4) vehicular surface parking spaces shall be provided as shown on Schedule B of this Agreement. Two (2) vehicular parking spaces shall be provided within the accessory building shown on Schedules B of this Agreement.

3.6.3 Required surface parking spaces shall be a minimum of eight (8) feet wide by eighteen (18) feet long, and shall be constructed of a permeable hard surface consisting of a grid

system filled with sand, gravel, or living plants (ground cover), excluding precast paver stones.

- 3.6.4 The driveway and all areas required for the manoeuvring of vehicles shall be constructed of interlocking precast paver stones as shown on Schedule B of this Agreement.
- 3.6.5 Pedestrian walkways to the rear of the apartment house shall be constructed of interlocking precast paver stones as shown on Schedule B of this Agreement.
- 3.6.6 Six (6) class "A" bicycle parking spaces and six (6) class "B" bicycle parking spaces shall be provided on the Lands. Class "B" bicycle parking spaces shall be located to the rear of the apartment house, and shall not impede the circulation of vehicles.

3.7 Outdoor Lighting

- 3.7.1 The driveway and surface parking areas shall be illuminated with downcast lighting fixtures. Site illumination may be provided through the use of stand-alone fixtures or fixtures affixed to the apartment house or accessory building, or a combination of both.
- 3.7.2 Lighting required pursuant to Section 3.7.1 shall be directed away from adjacent lots and buildings and shall use a full cut-off design and shall be shown on the site plan and building drawings prior to the issuance of a Construction Permit. Required lighting shall be installed prior to the issuance of an Occupancy Permit.
- 3.7.3 Any additional lighting shall be directed to driveways, walkways, parking areas, and building entrances and shall be arranged so as to divert the light away from streets and adjacent lots and buildings.

3.8 Landscaping

- 3.8.1 Prior to the issuance of a Construction Permit for the apartment house, the Developer shall provide a Landscape Plan which complies with the provisions of this section and conforms with the overall intentions of the site plan shown on Schedule B of this Agreement. The Landscape Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.
- 3.8.2 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.
- 3.8.3 Prior to issuance of any Occupancy Permit for the Apartment House, 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 Agreement.

3.8.4 Notwithstanding Section 3.8.3, an Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape works and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. 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 illustrated on the Schedules, 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 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.

3.9 Signs

Signage shall be limited to the following:

- (a) A maximum of one (1) ground sign shall be permitted on the Lands for the purposes of identifying the residential development and providing directional signage;
- (b) The ground sign shall:
 - (i) be located in the area shown on Schedule B of this Agreement;
 - (ii) not exceed three (3) feet in height above established grade;
 - (iii) be setback a minimum of one (1) foot from any abutting property;
 - (iv) not exceed a sign face width of six (6) feet;
 - (v) not be internally illuminated or backlit; and
 - (vi) incorporate ornamental plants around the entire base of the sign; and
- (c) One (1) temporary ground sign depicting the name or corporate logo of the Developer shall be permitted on the Lands prior to the issuance of the first Occupancy Permit. The temporary ground sign shall be removed prior to the issuance of the last residential Occupancy Permit.

3.10 Maintenance

3.10.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the 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 and ice control, salting of walkways and driveways.

3.10.2 All disturbed areas shall be reinstated to original condition or better.

3.11 Fencing and Screening

- 3.11.1 A six (6) foot high wooden privacy fence shall be constructed to the rear of the apartment house as shown on Schedule B of this Agreement. Fencing is not required along the northern and eastern side of the accessory building. Required fencing shall be installed prior to the issuance of an Occupancy Permit.
- 3.11.2 No refuse or recycling containers shall be located outside the apartment house or accessory building.
- 3.11.3 Propane tanks and electrical transformers shall be located on the Lands in such a way to ensure minimal visual impact from Vernon Street. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing or masonry walls with suitable landscaping.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All design and construction of primary and secondary service systems shall satisfy HRM's Municipal Design Guidelines and the latest edition of Halifax Water's Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

4.2 Off-Site Disturbance

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, 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 Development Officer, in consultation with the Development Engineer.

4.3 Solid Waste Facilities

A portion of the garage shown on Schedules B and G through K shall include designated space for a minimum of five stream (garbage, recycling, paper, cardboard and organics) 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 Inspector in consultation with Solid Waste Resources.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Erosion and Sedimentation Control Plans and Stormwater Management

Prior to the commencement of any site work on the Lands, including grade alteration or tree removal other than that required for preliminary survey purposes or associated off-site works, the Developer shall:

- (a) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared, stamped and certified by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and
- (b) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared, stamped and certified by a Professional Engineer, which shall include appropriate stormwater management measures to be put into place prior to, during, and after construction.

5.2 Stormwater Management System

The Developer agrees, at its own expense, to maintain in good order all stormwater facilities on the Lands.

5.3 Failure to Conform to Plans

If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

6.1.1 The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement;

- (b) The length of time for the completion of the development as identified in Section 7.4 of this Agreement; and
- (c) The location of the solid waste storage area within the garage, as required by Section 4.3 of this Agreement, to inside the apartment house.

6.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 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.

7.2 Subsequent Owners

- 7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 7.2.2 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).

7.3 Commencement of Development

- 7.3.1 In the event that development on the Lands has not commenced within three (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.
- 7.3.2 For the purpose of this Section, commencement of development shall mean the installation of the roof truss system for the third storey of the Apartment House.
- 7.3.3 For the purpose of this Section, Council may consider granting an extension of the commencement of development time period if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4 Completion of Development

7.4.1 Upon the completion of the whole development or complete phases of the development, 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.

7.4.2 For the purposes of this Section, completion of development shall mean the construction of the Apartment House and accessory building as shown on the Schedules of this Agreement and issuance of the final Occupancy Permit.

7.4.3 If the Developer fails to complete the development after five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 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.

8.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer fourteen (14) days written notice of the failure or default, 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 remedy 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 4th day of February, 2012/2013

SIGNED, SEALED AND DELIVERED
in the presence of:

Original Signed

Original Signed

SEALED, DELIVERED AND
ATTESTED to by the proper signing
officers of Halifax Regional Municipality,
duly authorized in that behalf, in the
presence of:

Original Signed

Original Signed

**JOHN SIPOS AND S MELISSA
SANFORD**

Original Signed

Per: _____

Per: _____

HALIFAX REGIONAL
MUNICIPALITY

Original Signed

Per: _____

Per: _____

Original Signed

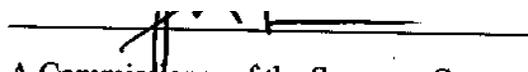
Municipal Clerk

Mike Savage
Mayor

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 28th day of November, A.D., 2012, before me, the subscriber personally came and appeared Linda Fraser a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that JOHN SIPOS AND S MELISSA SANFORD, one of the parties thereto, signed, sealed and delivered the same in his presence.

Original Signed


A Commissioner of the Supreme Court
of Nova Scotia

PETER A. LOHNES
A Barrister of the Supreme
Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 5th day of February, A.D., 2012, before me, the subscriber personally came and appeared before me R. MacIsaac & Lien MacSween the subscribing witness to the within and the foregoing Indenture, who, having been by me duly sworn, made oath and said that the Halifax Regional Municipality, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of Peter Kelly, its Mayor, and Cathy Mellett, its Municipal Clerk, its duly authorized officers in his presence.

Original Signed


A Commissioner of the Supreme Court
of Nova Scotia

SHERRIL MURPHY
A Commissioner of the Supreme
Court of Nova Scotia

Mike Savage

SCHEDULE "A"

ALL that certain lot, piece and parcel of land in the City of Halifax aforesaid being the southern half of lot "K" on the plan of Dr. Cogswell division of the Quinpool and Jubilee Roads on file in the office of the Registry of Deeds in Halifax aforesaid, and bounded and described as follows, namely:

BEGINNING at a point on the eastern side line of Louisburg Street (now Vernon Street) on said plan forming the southwest angle of the lot now under description and being distant northerly from the northern side of Jubilee Road one hundred and fifty-eight feet by the eastern side line of said Louisburg Street;

THENCE running northerly along said last mentioned line seventy-nine feet;

THENCE easterly at right angles to Louisburg Street aforesaid eighty-two feet, more or less or until it meets the western boundary line of property, now or formerly of Caroline A. Darby;

THENCE southerly along said Caroline A. Darby's western boundary line seventy-nine feet;

THENCE westerly in a line at right angles to Louisburg Street aforesaid eighty-three feet, more or less, to the place of beginning;

ALSO ALL that certain lot, piece and parcel of land to the west of Halifax Common in the City of Halifax aforesaid, being part of lot "K" on the plan of Dr. Cogswell's division on the Quinpool and Jubilee Roads on file in the Office of the Registry of Deeds in Halifax aforesaid, bounded and described as follows:

BEGINNING at a point on the eastern side line of Louisburg Street (now Vernon Street) on said plan forming the southwest angle of the lot now under description and being distant northerly from the northern side of Jubilee Road two hundred and thirty-seven feet by the eastern side line of Louisburg Street;

THENCE running northerly along said last mentioned line thirty-nine feet six inches;

THENCE easterly on a line parallel with the south side of Cedar Street eighty-one feet, more or less, to property now or formerly of Caroline A. Darby;

THENCE southerly by said Darby's property thirty-nine feet six inches;

THENCE westerly on a line at right angles to Louisburg Street aforesaid, eighty-two feet, more or less, to the place of beginning;

EXCEPTING thereout that part of said land and premises which was conveyed by the said John Murphy to one Samuel Butler by deed dated the 1st day of September, 1921 and recorded at the office of the Registry of Deeds at Halifax, in Book 547, page 213;

ALSO ALL that lot, piece or parcel of land lying at the back of a lot occupied by civic number 172 Henry Street in the City of Halifax and more particularly described as follows:

BEGINNING at a point on the boundary between the said property and the adjacent property facing on Vernon Street at the south boundary of said Henry Street property;

THENCE running northerly along the said boundary line of the Henry Street property a distance of thirty-three (33) feet more or less or to the north side of the foundation of a concrete garage;

THENCE easterly by the north side of said foundation a distance of fourteen (14) feet or to a point five tenths (0.5) of a foot east from the east side of said foundation;

THENCE southerly by a line parallel to the said foundation and five tenths (0.5) of a foot from it, a distance of thirty-three (33) feet more or less to the prolongation of the south side of said foundation, being the south boundary of said Henry Street lot;

THENCE westerly by said boundary a distance of fourteen (14) feet to the point of beginning;

SAVING AND EXCEPTING THEREFROM ALL that lot, piece or parcel of land lying at the back of the lot occupied by Civic Numbers 67 to 73 Vernon Street in the City of Halifax and more particularly described as follows:

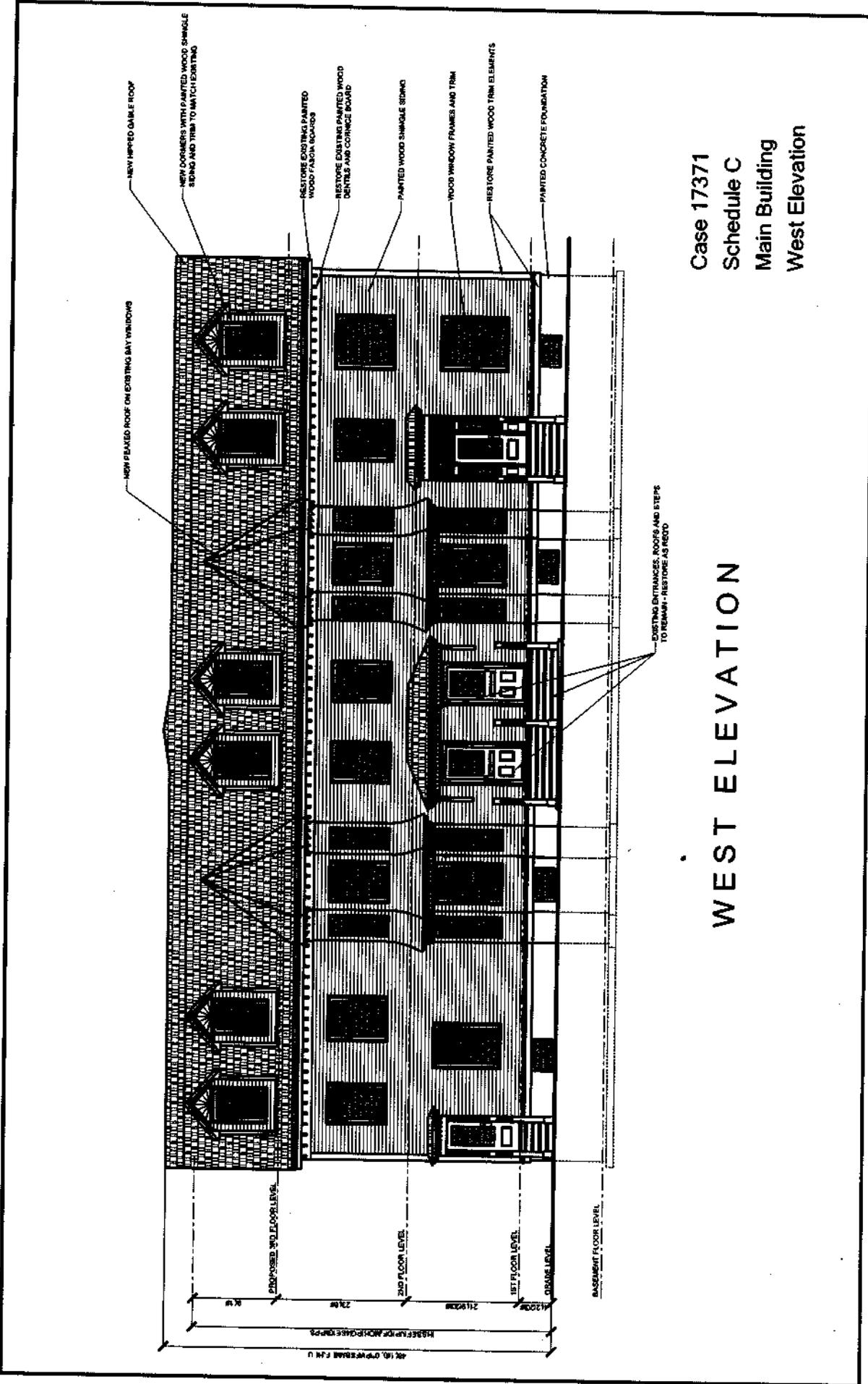
BEGINNING at a point on the boundary between the said property and the adjacent property facing on Henry Street at a distance of thirty-three feet in a northerly direction from the south boundary of said Vernon Street property;

THENCE running northerly along the said division line a distance of thirty-four point two (34.2) feet more or less to the north side of the foundation of an existing concrete garage;

THENCE westerly by the north side of said foundation a distance of 1.5 feet more or less to a point five tenths (0.5) of a foot west of the west edge of the said foundation;

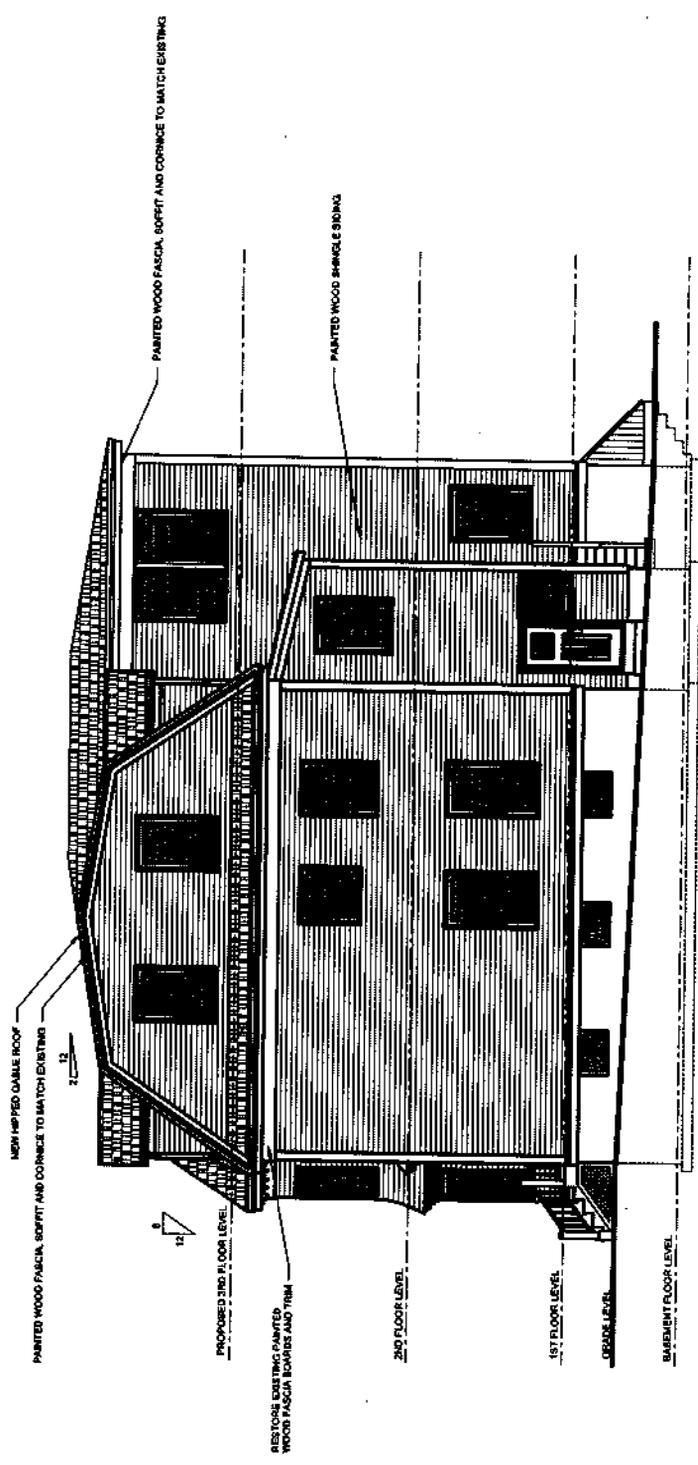
THENCE southerly parallel to the west edge of the said foundation and five tenths (0.5) of a foot from it, a distance of Thirty-four point Two (34.2) feet more or less to the south side of said foundation;

THENCE easterly by the said foundation a distance of 1.5 feet more or less to the point of beginning.



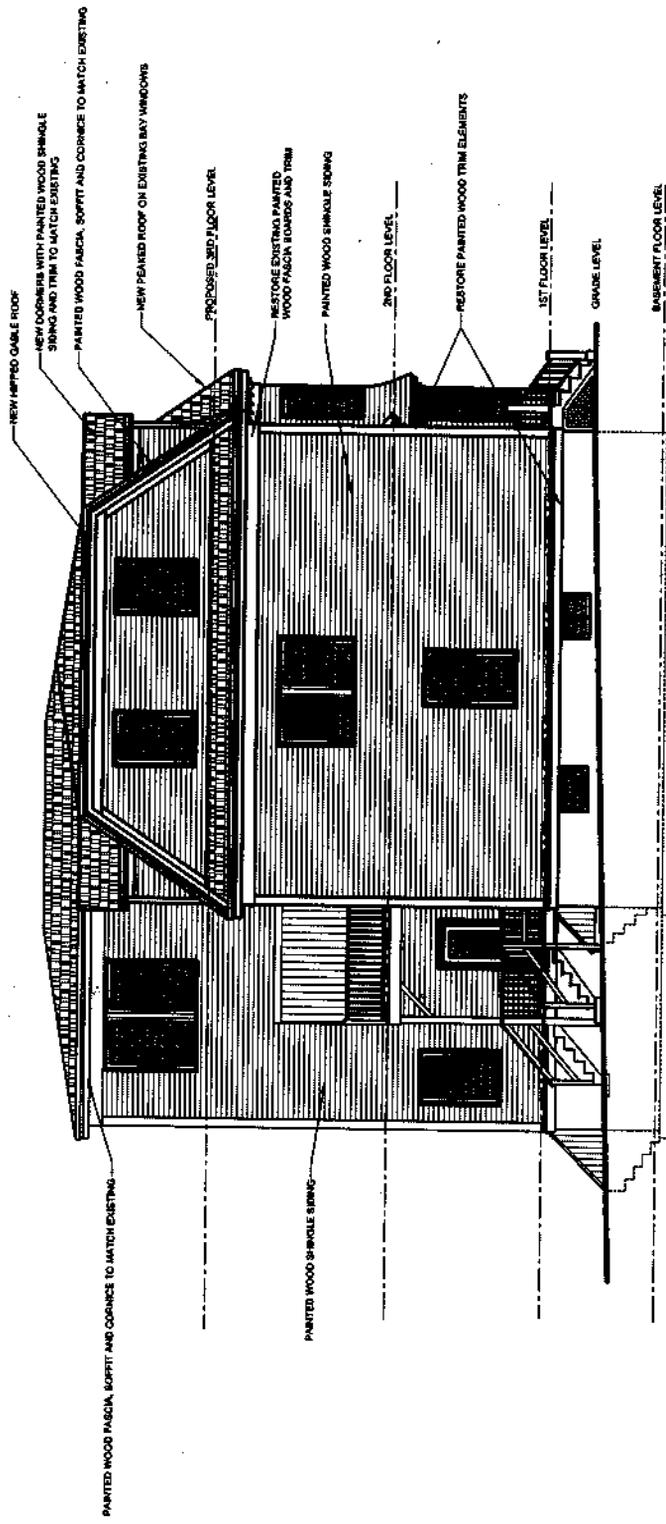
Case 17371
 Schedule C
 Main Building
 West Elevation

WEST ELEVATION



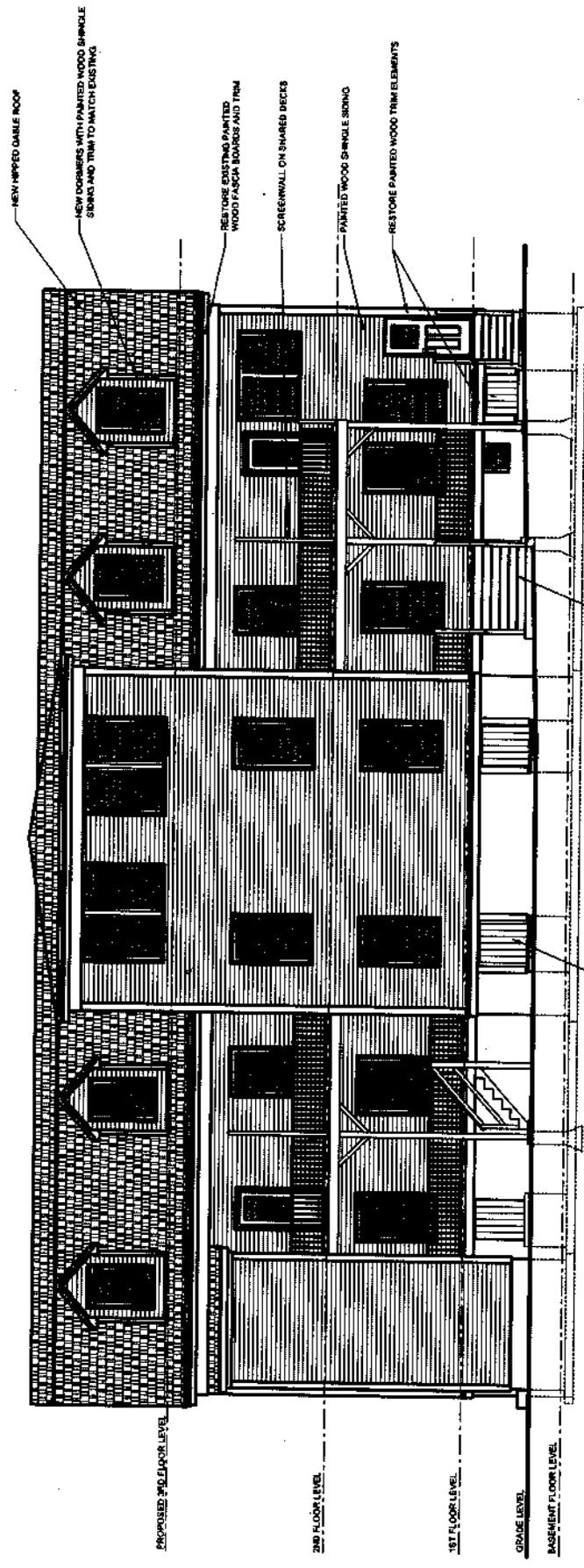
SOUTH ELEVATION

Case 17371
 Schedule D
 Main Building
 South Elevation



Case 17371
 Schedule E
 Main Building
 North Elevation

NORTH ELEVATION

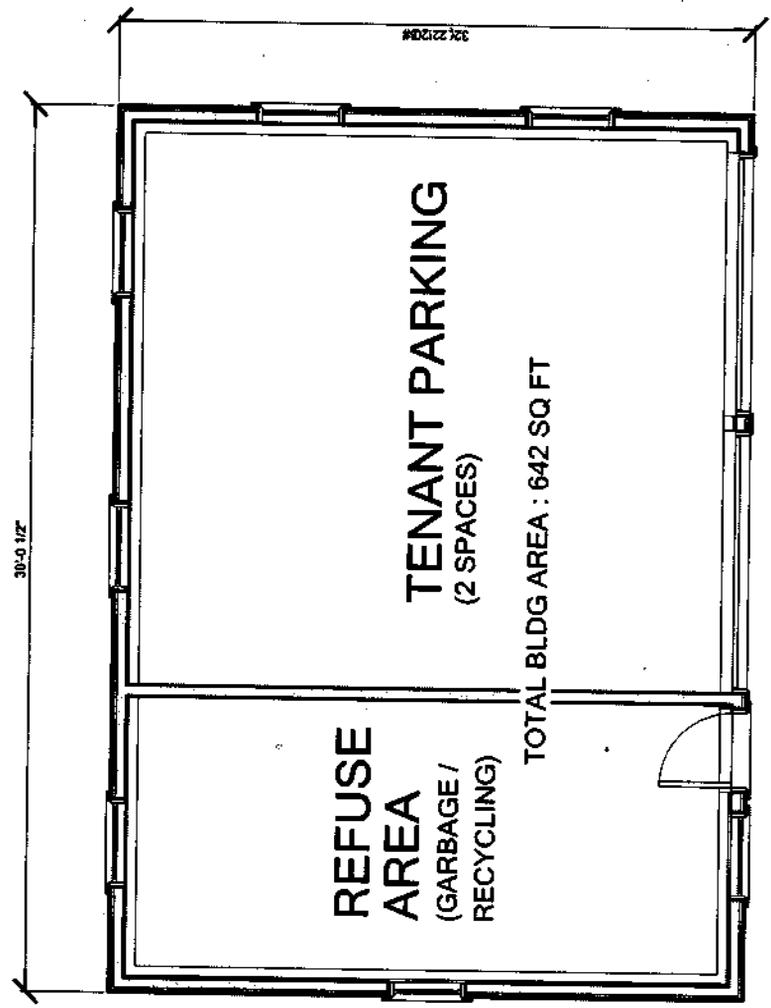


Case 17371
 Schedule F
 Main Building
 East Elevation

EAST ELEVATION

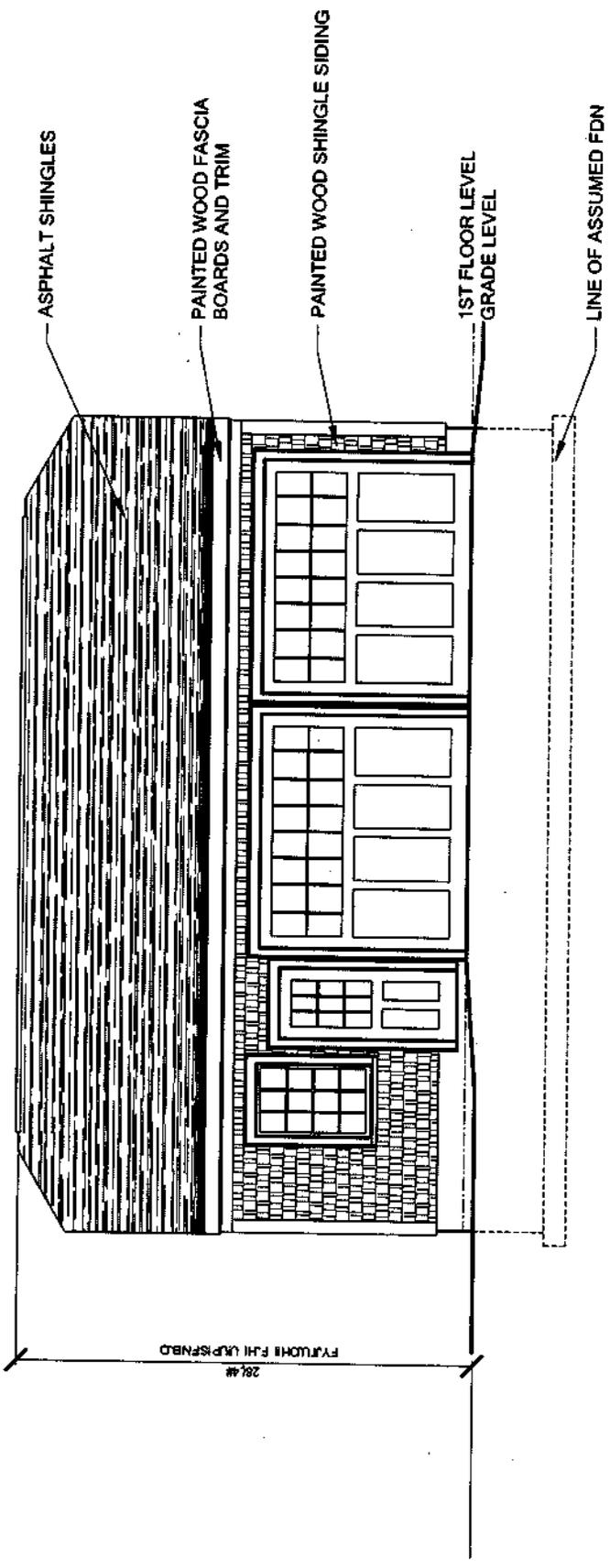


BLDG. NORTH



Case 17371
Schedule G
Accessory Building
Floor Plan

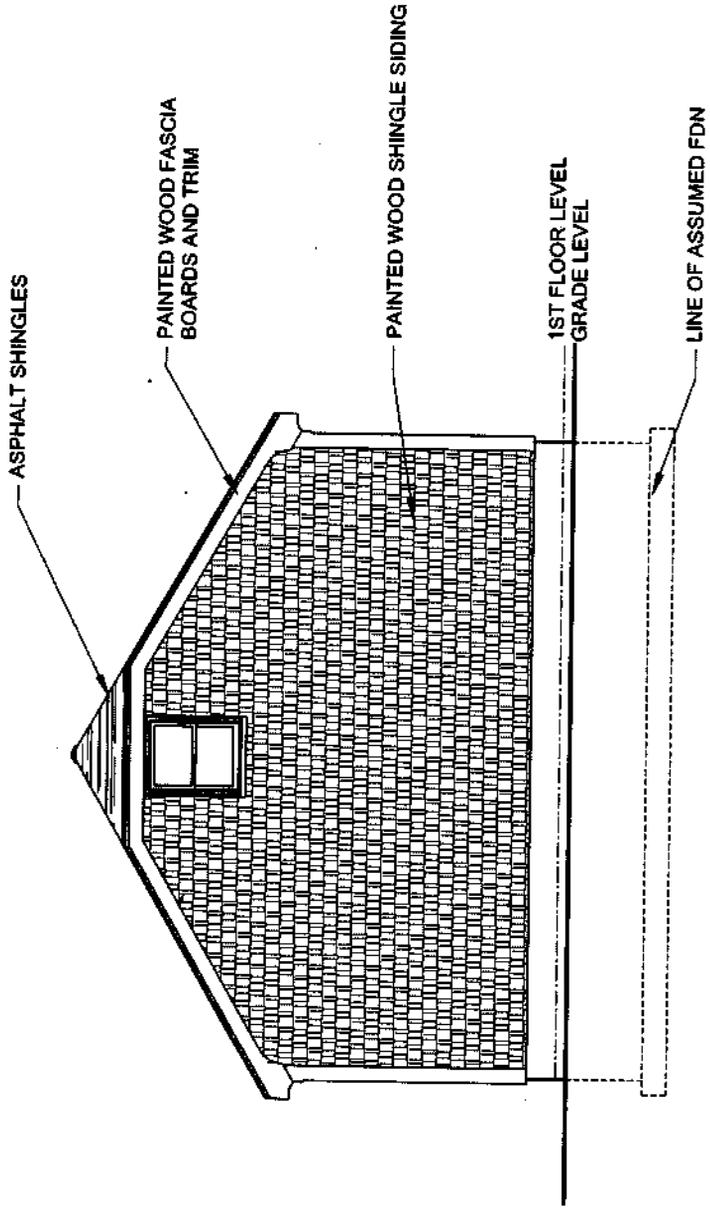
GARAGE FLOOR PLAN



GARAGE - WEST ELEVATION

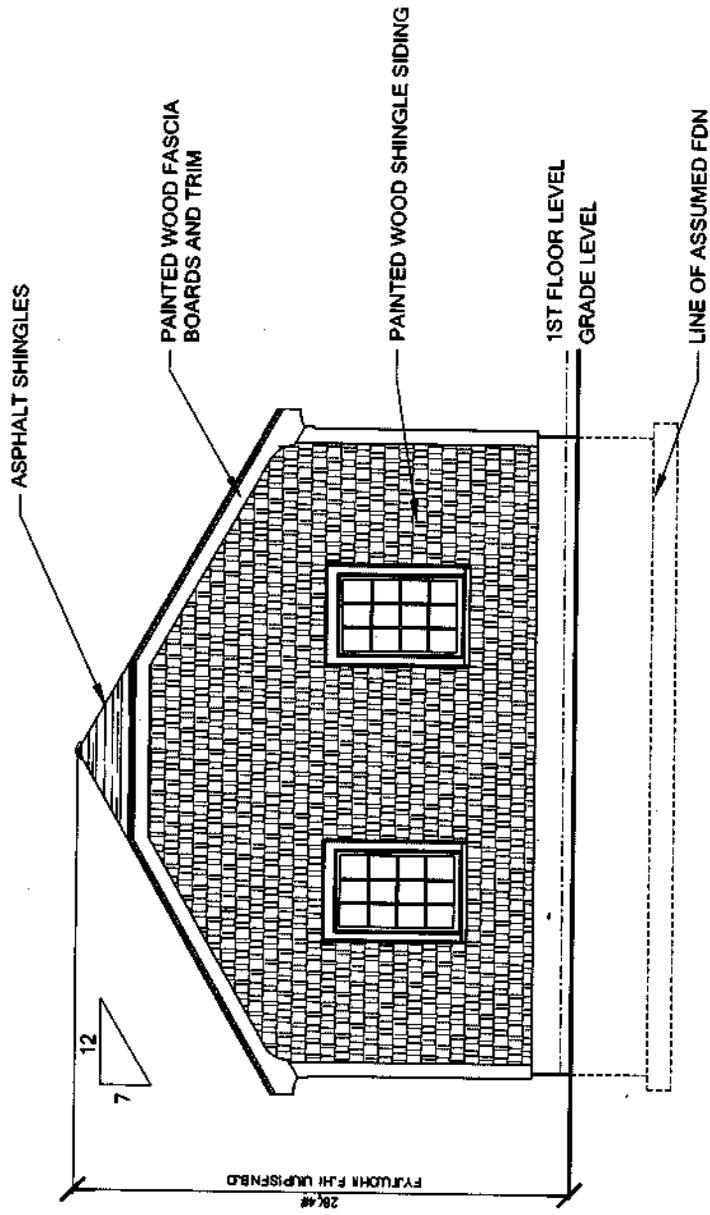
Case 17371
 Schedule H
 Accessory Building
 West Elevation

28' 1/2"
 FLOOR LINE



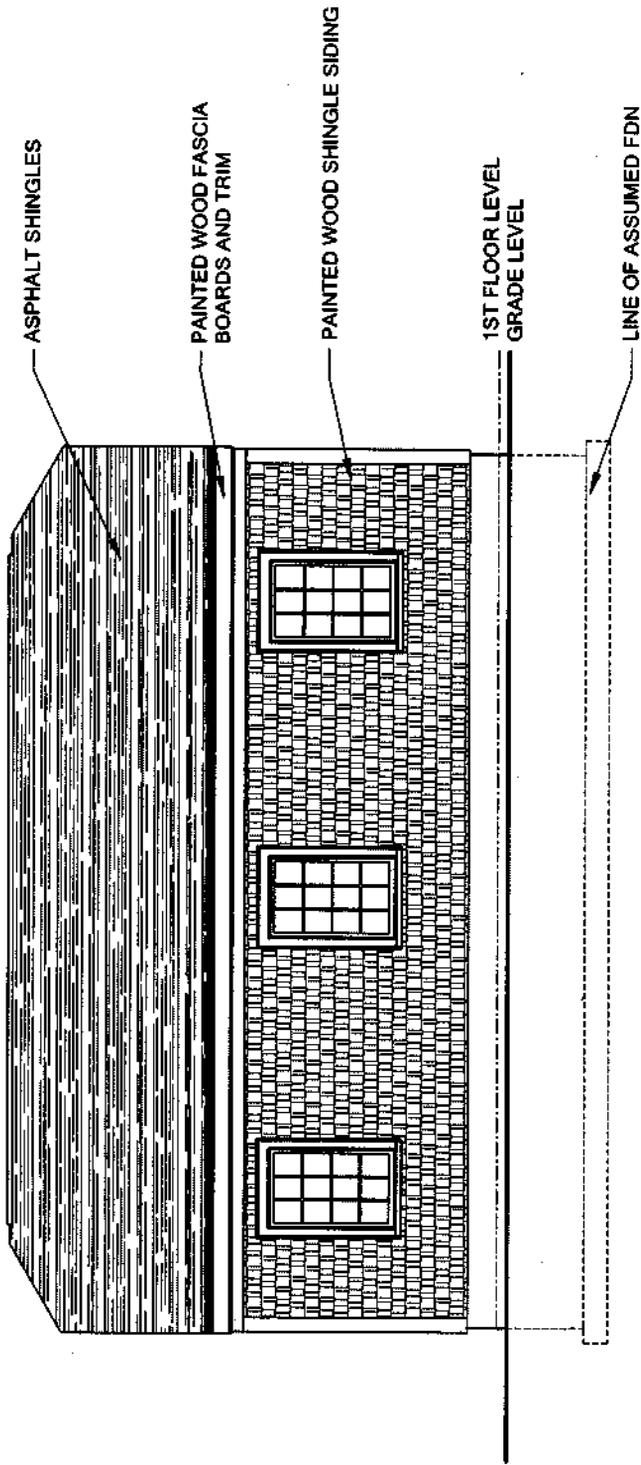
GARAGE: SOUTH ELEVATION

Case 17371
Schedule I
Accessory Building
South Elevation



GARAGE: NORTH ELEVATION

Case 17371
 Schedule J
 Accessory Building
 North Elevation



GARAGE: EAST ELEVATION

Case 17371
Schedule K
Accessory Building
East Elevation