



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

Item No. 13.1.1
Halifax and West Community Council
January 18, 2022

TO: Chair and Members of the Halifax and West Community Council

SUBMITTED BY: *Original Signed*
Erin MacIntyre, Acting Executive Director of Planning and Development

DATE: January 4, 2022

SUBJECT: **Case 23781: Discharge Development Agreement for 1956-58 Rosebank Avenue, Halifax**

ORIGIN

Application by Jeffrey and Katherine Dahn.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that the Halifax and West Community Council:

1. Approve, by resolution, the Discharge Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharge Agreement be signed by the property owner within 240 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

Jeffrey and Katherine Dahn have requested that the existing development agreement for 1956-58 Rosebank Avenue be discharged. Discharging the existing development agreement will allow future development of the site to be contemplated under the applicable zoning of the Regional Centre Land Use By-law.

Subject Site	1956-58 Rosebank Avenue, Halifax
Location	The western side of Rosebank Avenue, mid-block
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	ER (Established Residential) Designation under the Regional Centre Municipal Planning Strategy
Zoning (Map 2)	ER-2 (Established Residential 2) under the Regional Centre Land Use By-law
Size of Site	734.5 sq. m (7906 sq. ft.)
Street Frontage	18.3 m (60 ft.)
Current Land Use(s)	Two-unit dwelling
Surrounding Use(s)	Single and two-unit residential buildings

Proposal Details

The applicant wishes to discharge an existing development agreement which permitted the construction of a sunroom at the rear of an existing two-unit dwelling at 1956-58 Rosebank Avenue, Halifax. Council for the former City of Halifax approved this development agreement on May 20, 1992 as Case 6461 (Attachment B).

The applicant wishes to renovate the property and the regulations under the Centre Plan zoning are more permissive than the regulations under the existing development agreement. If Council approves the discharge, the property owner may apply for permits under the new ER-2 zone regulations.

Enabling Policy and LUB Context

The property is designated Established Residential (ER) under the Regional Centre Municipal Planning Strategy and zoned Established Residential 2 (ER-2) under the Regional Centre Land Use By-law. The existing development agreement was approved under Implementation Policy 3.14 of the Halifax Municipal Planning Strategy has since been repealed and no longer applies to the site.

The *Halifax Regional Municipality Charter* provides Council with a mechanism to discharge development agreements. Part VIII, Clause 244 identifies that 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. 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.

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. The application received 67 unique webpage views and the average time on the page was 1 minute and 48 seconds. Staff received one phone call from a member of the public with questions of clarification. There is no requirement for a public hearing for this application.

DISCUSSION

On April 2, 1992 an application was approved by the former Halifax City Council to allow the construction of a sunroom at the rear of the two unit dwelling at 1956-58 Rosebank Avenue. At that time the property was zoned R-1 (Single Unit Dwelling) and the two-unit dwelling was established as an existing non-conforming use, as it had been in existence since 1929, and predated the regulations of the land use by-law. As a non-conforming use, the addition of the sunroom required a development agreement in order to proceed.

A permit to renovate the structure was received in April 2021 and through the review of that application it was found the property was currently regulated by the above-mentioned development agreement. For the renovation to proceed the agreement must be discharged from the property.

Timelines for Execution of the Discharging Agreement

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances presents, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

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 Regional Center Secondary Municipal Planning Strategy. The proposed discharge is also explicitly provided for in both the *HRM Charter* and the approved development agreement.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM cost associated with processing this planning application can be accommodated with the approved 2021-2022 operating budget for C310 Urban and Rural Planning Applications.

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 discharge of the development agreement is contained within the Discussion section of this report, if applicable.

ENVIRONMENTAL IMPLICATIONS

None 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. This is not recommended for the reasons discussed in this report. A decision of Council to refuse to discharge a development agreement is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

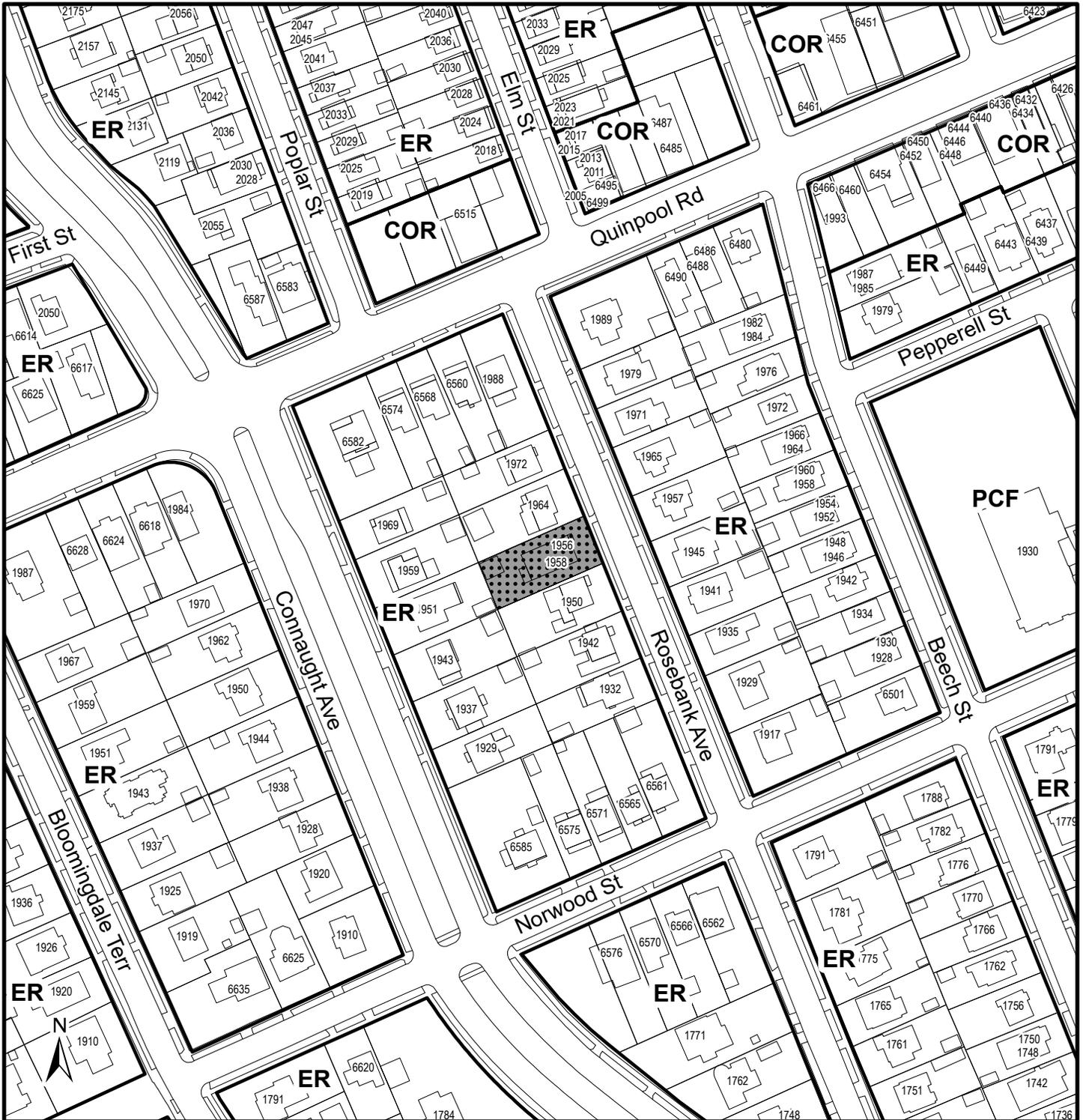
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Discharging Agreement
Attachment B: Original Development Agreement

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

Report Prepared by: Melissa Eavis, Planner III, (902)802-7616



Map 1 - Generalized Future Land Use

1956, 1958 Rosebank Avenue,
Halifax

 Subject Property

Designation - Regional Centre

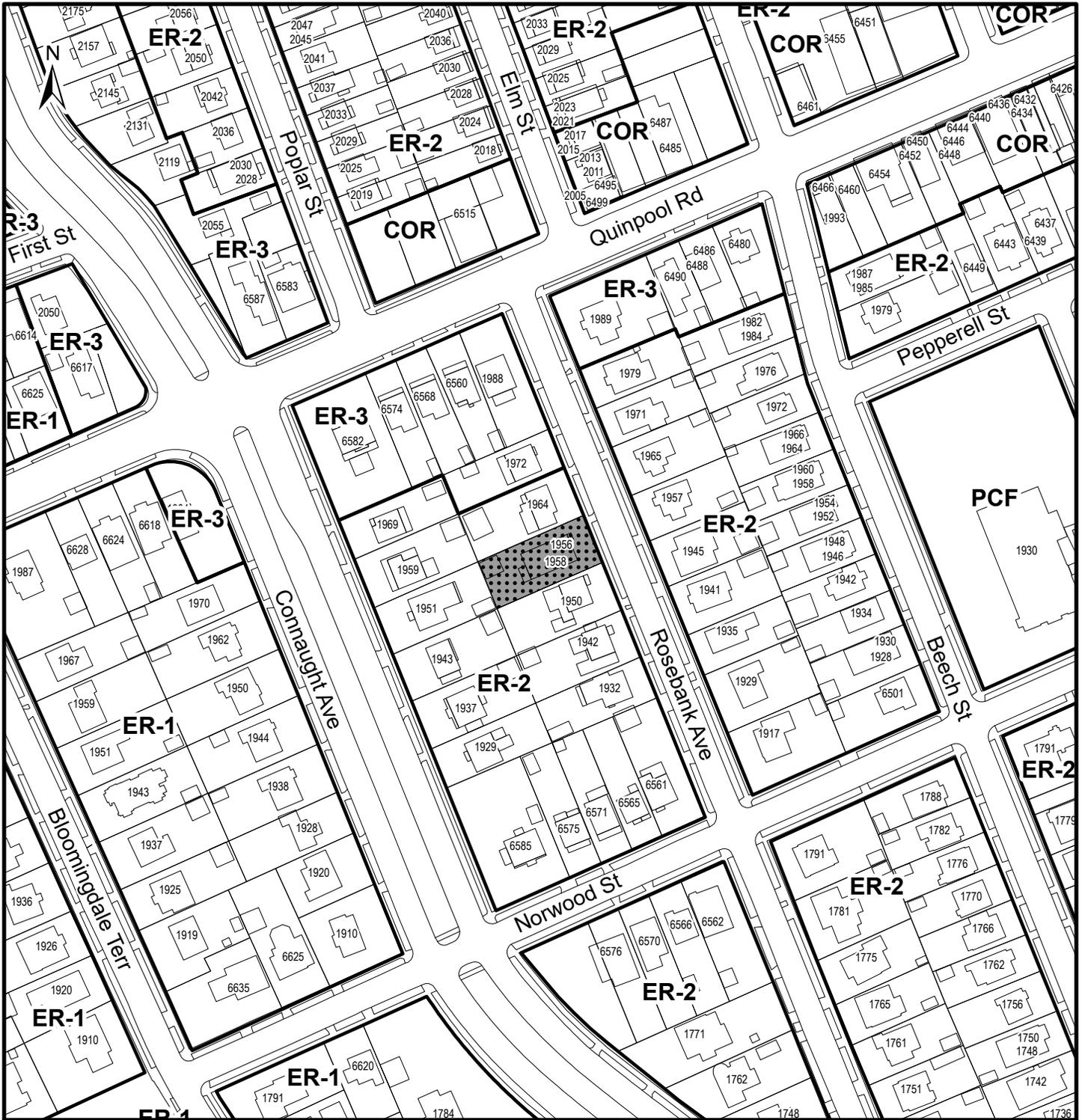
- COR Corridor
- ER Established Residential
- PCF Parks and Community Facilities



Regional Centre
Plan Area

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.



Map 2 - Zoning

1956, 1958 Rosebank Avenue,
Halifax

HALIFAX

 Subject Property

Zone - Regional Centre

- COR Corridor
- ER-1 Established Residential 1
- ER-2 Established Residential 2
- ER-3 Established Residential 3
- PCF Parks and Community Facilities



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.

Regional Centre
Land Use By-Law Area

Attachment A: Proposed Discharging Agreement

THIS DISCHARGING AGREEMENT made this _____ day of _____, 20____,

BETWEEN:

JEFFERY RAYMOND DAHN AND KATHERINE MARY DAHN

individuals, in the Halifax Regional Municipality, 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 Developers are the registered owners of certain lands located at 1956 Rosebank Street, Halifax and which said lands are more particularly described in the Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on May 20, 1992 the former City of Halifax Council approved an application to enter into a development agreement to allow for the construction of sun room at the rear of the two unit dwelling on the Lands pursuant to Policies of the Halifax Municipal Planning Strategy and referenced as case number 6461, and which said development agreement was registered on June 26, 1992 at the Land Registry Office in Halifax Registry in Book 5249 and Page 67 (hereinafter called the "Original Agreement");

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

AND WHEREAS Section 244(2) of the *Halifax Regional Municipality Charter* states that 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 owners;

AND WHEREAS the Halifax and West Community Council approved this request by resolution at a meeting held on **[Insert – date]**, referenced as case number 23781;

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

1. The Original 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 Regional Centre Land Use By-law, 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:

(Insert Registered Owner Name)

Witness

Per: _____

—

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

HALIFAX REGIONAL MUNICIPALITY

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 Iain MacLean, 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

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

25902

1992

THIS AGREEMENT made this 17th day of June

BETWEEN:

APPROVED
AS TO FORM
Original Signed
City Solicitor

ANTHONY AND REXANNE LUGAR,
in the County of Halifax,
Province of Nova Scotia,
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

CITY OF HALIFAX,
a municipal body corporate,
(hereinafter called the "City")

OF THE SECOND PART

WHEREAS the Developer wishes to obtain permission to construct a sun room at the rear of the two unit dwelling at 1956-58 Rosebank Avenue in the City, pursuant to Section 16AF of the peninsula part of the Land Use Bylaw;

AND WHEREAS a condition of the granting of approval of Council is that the Developer enter into an agreement with the City;

AND WHEREAS the Council of the City, at its meeting on the 20th day of May, 1992, approved the said development agreement to permit construction of a sun room subject to the registered owner of the lands described herein entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the City of the development agreement requested by the Developer, the Developer agrees as follows:

1. The Developer is the registered owner of the lands known as 1956-58 Rosebank Avenue in the City of Halifax, described in Schedule "A" hereto (hereinafter called the "lands").
2. The Developer shall construct on the lands an addition to the existing building, which in the opinion of the Development Officer, is substantially in conformance with Plan(s) No. P200/18727-8 filed in the City of Halifax Development and Planning Department as Case No. 6461, and shall not develop or use the lands for any other purpose other than a two unit dwelling.

3. The "development" shall be completed (completion is defined as fulfilling the terms of the entire agreement) within one (1) year from the date of final approval by Halifax City Council or any other bodies as necessary, whichever approval is later, including any applicable appeal periods. If the "development" has not been completed by the applicable time, this agreement will terminate unless specifically extended, upon request of the applicant, by resolution of City Council and all rights and obligations arising hereunder shall be at an end.

4. Notwithstanding any other provision of this agreement, the Developer shall not undertake or carry out any development on the lands which does not comply with all City of Halifax laws, including, without restricting the generality of the foregoing, the Building Code Ordinance and the Fire Prevention Ordinance and no permit shall be issued for any such development.

5. The City shall issue the necessary permits for the development upon the expiration of the twenty-one (21) day appeal period under Section 78 of the Planning Act, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken; provided, however, that the City shall not issue any occupancy permit for the development unless and until the development specified in the plans referred to in No. 2 hereof has been completed substantially in accordance with the said plans and the requirements of this have been met.

Time shall be of the essence of this agreement.

This agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of)



) ANTHONY LUGAR

) **Original Signed**

) REXANNE LUGAR

) **Original Signed**

) CITY OF HALIFAX



) Per **Original Signed**

) Per **Original Signed**
City Clerk

DESCRIPTION

ALL that lot, piece and parcel of land situate, lying and being in the City of Halifax, in the Province of Nova Scotia, and being part of Rosebank Park, comprising Lot Number 12, Section "C", as per plan prepared by MacKenzie, Pickings and McCallum and based upon the plan of subdivision of said Rosebank Park, prepared by Warren H. Manning of Boston and dated May 20th, 1911, the said plan made by MacKenzie, Pickings and McCallum being dated March 10th, 1915, and a copy being filed in the Office of the Registrar of Deeds in the City of Halifax aforesaid, said lands being more particularly described as follows:

BEGINNING at a point on the western side line of Rosebank Avenue, at the south-eastern corner of Lot No. 10, Section "C", as shown on plan of said Rosebank subdivision;

THENCE running westerly along the south side line of said Lot No. 10 one hundred and thirty-four feet more or less or until it meets the north-east corner of Lot No. 11, Section "C", as shown on said plan;

THENCE southerly along the eastern boundary of said Lot No. 11 fifty-nine and five tenths feet, more or less, or until it meets the north-east corner of Lot No. 13, Section "C", as shown on said plan;

THENCE easterly along the northern boundary of Lot No. 14, Section "C", on said plan one hundred and thirty-four feet, more or less to the west side line of Rosebank Avenue;

THENCE northerly along the said west side line of Rosebank Avenue fifty-nine feet, more or less, to the place of beginning, and also a free and uninterrupted right-of-way and passage for the Grantee, his Heirs and Assigns, and all his or their agents, servants and workmen, and all other persons authorized by them or on their behalf at all times and for all purposes and for all persons, animals, vehicles, of, in, through and over all that road and street known as Rosebank Avenue, in the Rosebank Park subdivision, in the City of Halifax, and more particularly shown as set forth in the said plan, said right-of-way being appurtenant to the lands hereinbefore described.

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 17th day of JUNE, A.D., 1992,
before me, the subscriber personally came and appeared
NANCY WHITE a subscribing witness to the within
and foregoing Indenture, who, having been by me duly sworn,
made oath and said that ANTHONY AND REXANNE LUGAR, one of the
parties thereto, signed, sealed and delivered the same in her
presence.

Original Signed

A BARRISTER OF THE SUPREME COURT
OF NOVA SCOTIA

Original Signed

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 17th day of June, A.D., 1992,
before me, the subscriber personally came and appeared
Mildred Hull a subscribing witness to the
within and the foregoing Indenture, who, having been by me
duly sworn, made oath and said that the City of Halifax, one
of the parties thereto, caused the same to be executed and
its Corporate Seal to be thereunto affixed by the hands of
Maire Ducharme, its Mayor, and E. A. Kerr, its City Clerk,
its duly authorized officers in her presence.

Original Signed

of Nova Scotia

MARY ELLEN DONOVAN
A Barrister of the Supreme Court

Province of Nova Scotia of Nova Scotia
County of Halifax

I hereby certify that the within instrument
was recorded in the Registrar of Deeds Office
at Halifax in the County of Halifax, N.S.,
at 3:07 o'clock P.M. on the 26th
day of June A.D. 1992 in
Book No. 5249 at pages 67-70
as Document Number 25902

Original Signed

Registrar of Deeds for the Registration
Division of Halifax County