

# HALIFAX

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

**Item No. 15.1.12**  
**Halifax Regional Council**  
**July 12, 2022**

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

**SUBMITTED BY:**

Original Signed by 

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Jacques Dubé, Chief Administrative Officer

**DATE:** June 21, 2022

**SUBJECT:** Encroachment Agreement: 805 - 819 Bedford Highway, Halifax (United Gulf Developments)

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## **ORIGIN**

Requested by Ian Watson of UPLAND Urban Planning & Design Studio, on behalf of his client United Gulf Developments, for an encroachment along Bedford Highway in front of civic addresses 805 - 819 (PID 00428623).

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter*. SNS 2008, c. 39, subsection 324(2) provides:

324(2) The Council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments.

*By-Law E-200, respecting Encroachments Upon, Under or Over a Street, subsections 3 and 4 provide:*

3 No person shall construct or maintain any encroachment or make use of a street for construction or restoration purposes in the Municipality unless an encroachment license has been issued by the Municipality.

4B An encroachment license shall not be issued unless the encroachment is authorized by Council except for the following encroachments, which may be authorized by the Engineer,

## **RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Approve the encroachment in front of civic addresses 805 - 819 (PID 00428623) and the attached Encroachment License Agreement for the parking lot, subject to non-substantive amendments, if any, allowing the infrastructure to remain within the street right of way and be owned and maintained by the Licensee, and authorize the Mayor and Municipal Clerk to execute the attached Encroachment License Agreement once finalized.

## **BACKGROUND**

Civic addresses 805 to 819 Bedford Highway, referred to in this report as “the building”, form part of the Esquire Motel Site. In 2017, United Gulf Developments (UGD) expanded their parking lot, located in front of the building, into the street right of way with a new row of parking stalls. This significantly increased their parking capacity and further work was carried out in 2018 to pave and paint both the parking lot and the additional driveway that was previously constructed. HRM did not grant approval for either the parking lot or additional driveway to be constructed within the street right of way; however, there is an ongoing dialogue between UGD and HRM in order to resolve these issues.

A proposed development agreement for this property by UPLAND Urban Planning & Design Studio on behalf of UGD (Case 21826) is currently under consideration by North West Community Council. UGD has requested several changes including the construction of new motel and accessory buildings, expansion of commercial uses for buildings, subdivision of lands, and a reduction of the non-disturbance area. At its meeting on June 20, 2022, Community Council approved a notice of motion to consider the proposed development agreement and schedule a public hearing on that matter.

UGD is requesting an encroachment license to allow the parking lot to exist in its current location until such a time that the land is identified as surplus and they have the opportunity to acquire it from HRM. The encroaching infrastructure does not fall under categories which may be authorized by the Engineer as described in the *Encroachment By-law*<sup>1</sup> therefore approval is being sought through Regional Council.

## **DISCUSSION**

The street right of way parcel along Bedford Highway is an inconsistent size and it gets significantly wider in front of the building. A survey sketch prepared for UGD by Design Point Engineering & Surveying (Attachment 1) shows the property line very near the front of the building while HRM's GIS mapping shows the property line to be several metres away from the building. A parking lot has existed in front of the building for decades and it is assumed to have been constructed prior to the adoption of the *Encroachment By-law* in 1999. The proposed encroachment agreement is intended to address the parking lot expansion that was constructed in 2017 as it appears to encroach upon 360 square metres of street right of way.

There are two key considerations with respect to lands in this area: HRM's Bedford Highway Functional Plan seeks to introduce a continuous active transportation facility and targeted transit priority improvements along the corridor; and the *Bedford Municipal Planning Strategy*<sup>2</sup> describes in Policy C-13 setback requirements around a proposed entrance road to the Waterfront Development Project. Both projects are in early stages where the design and spatial requirements are still being finalized; however, preliminary designs suggest that UGD's parking lot may not be impacted.

As a result, HRM may be able to rationalize the street lines and dispose of any unneeded property in front of the building once designs for both projects have been completed. This is expected to occur within the next three years, subject to funding and approvals. UGD would then have the opportunity to purchase the surplus land and terminate their encroachment agreement.

As outlined in the encroachment agreement, UGD would retain ownership of the encroaching infrastructure and be responsible for any required maintenance. Further, the encroachment can be relocated at HRM's discretion and at the expense of the Licensee, per Section 3 of the agreement, which will help mitigate conflicts associated with any future changes along the corridor. HRM or the Licensee may also terminate the agreement, per Section 16, and in doing so, the encroachment must be removed within sixty calendar days.

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<sup>1</sup> See [Encroachments By-law \(E-200\)](#)

<sup>2</sup> See [Bedford Municipal Planning Strategy](#)

It should be noted that the additional driveway constructed on the northern end of the property will need to be relocated to provide adequate separation with the proposed entrance road per the requirements in the *Streets By-law*<sup>3</sup>.

The encroachment should not result in any additional cost or expense to HRM, and instead it represents a source of revenue through the initial license fee and subsequent annual rental fees. The sale of any surplus lands would also represent a one-time source of revenue.

### **FINANCIAL IMPLICATIONS**

The applicant will be required to pay a one-time license fee of \$125 plus an annual rental fee of \$3600, as described in the *Encroachment By-law* and *Administrative Order Number 15 respecting License, Permit and Processing Fees*<sup>4</sup>.

Assuming HRM has not disposed of any unneeded property in front of the building by 2025/26, the 4-year estimated financial implications can be summarized as follows:

<b>Fiscal Year</b>	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>
<b>Operating - Cost Centre R112</b>	\$3,725	\$3,600	\$3,600	\$3,600

Should HRM be able to dispose of the property, the applicant would have the opportunity to purchase the surplus land, terminate the encroachment agreement, and no revenue would be realized.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this report. The risks considered rate low, and to reach this conclusion consideration was given to financial, environmental, operational impacts as well as alignment with strategic initiatives.

### **COMMUNITY ENGAGEMENT**

Community engagement, as described in the *HRM Community Engagement Strategy*<sup>5</sup>, is not applicable to this process. Only the applicant may appeal the decision of Regional Council with respect to encroachments, through the Appeals Committee as described in the *Encroachment By-law*.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications were identified.

### **ALTERNATIVES**

Council could choose not to approve the proposed Encroachment Agreement. This alternative is not recommended because without a license, United Gulf Developments would be required to remove encroaching infrastructure within thirty days, per the *Encroachment By-law*, even though there may be an opportunity for them to acquire these lands in the future.

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<sup>3</sup> See [Streets By-law \(S-300\)](#)

<sup>4</sup> See [Administrative Order Number 15](#)

<sup>5</sup> See [HRM Community Engagement Strategy](#)

**ATTACHMENTS**

1. Sketch of PID 00428623 (property boundary)
2. Council Approved Encroachment Agreement (United Gulf Developments)
3. Motels Encroachment Letter (from UPLAND)

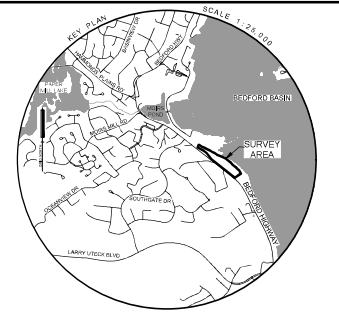
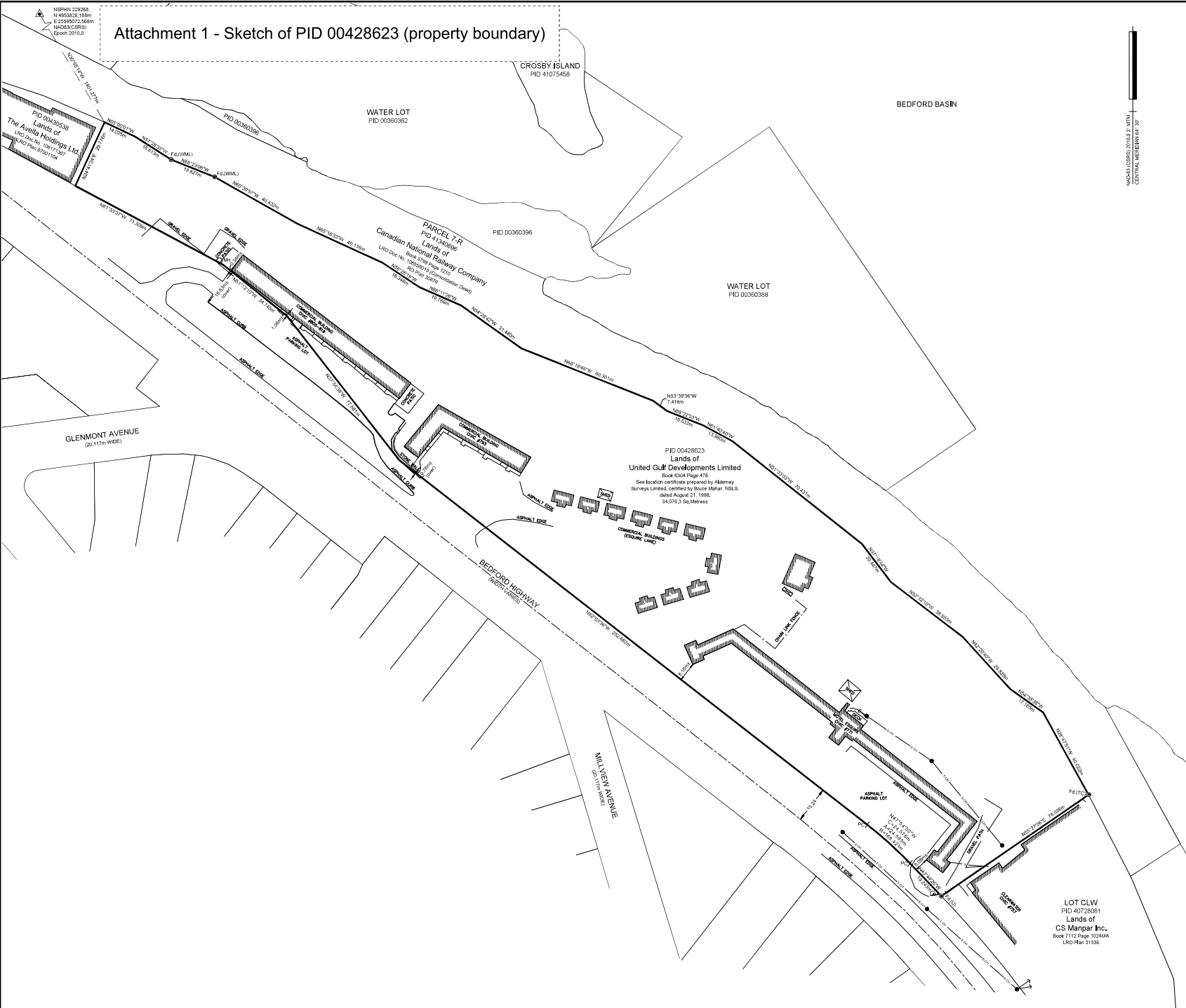
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Ben Daisley, P.Eng., Right of Way Engineer, Public Works 902.490.6853

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Attachment 1 - Sketch of PID 00428623 (property boundary)

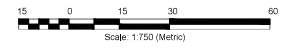


- LEGEND:**
- LANDS DEALT WITH BY THIS PLAN
  - OTHER LANDS
  - CALCULATED TIE LINE
  - OVERHEAD WIRE
  - FENCES
  - CONSTRUCTED ROAD CENTRELINE
  - NOVA SCOTIA HIGH PRECISION NETWORK MONUMENT
  - PLACED SURVEY MARKER
  - FOUND SURVEY MARKER
  - BROWN MARK
  - UTILITY POLE
  - GUY WIRE
  - SIGN
  - MANHOLE
  - POINT OF CURVATURE
  - R, A, C RADIUS, ARC, CHORD
  - LRD LAND REGISTRATION OFFICE
  - H.S.L. NOVA SCOTIA LAND SURVEYOR
  - PID PROPERTY IDENTIFICATION NUMBER
  - (U) UNIDENTIFIED
  - (TC) THOMPSON CONN & ASSOCIATES
  - (WM) WALLACE MACDONALD & LIVERY LTD.
- BEARINGS ARE GRID DERIVED FROM GROUND OBSERVATION TO HIGH-PIV. 22088, REFERENCED TO THE NOVA SCOTIA 3° MODIFIED TRANSVERSE MERCATOR PROJECTION, ZONE 5, CENTRAL MERIDIAN 64° 20' W, BASED ON THE HORIZONTAL REFERENCE FRAME NAD83 (GRS83), EPOCH 2011.0.
- ALL DISTANCES SHOWN ARE GRID UNLESS OTHERWISE NOTED. GROUND DISTANCES MAY BE DETERMINED BY APPLYING A CORRECTED SCALE FACTOR OF 1.000554 (AT SITE OF SURVEY).
- FIELD MEASUREMENTS HAVE NOT BEEN ADJUSTED.
- FIELD SURVEYS WERE CARRIED OUT BETWEEN MAY 24, 2014 AND JUNE 18, 2020.



Sketch of  
**PID 00428623,**  
 Lands of  
**UNITED GULF DEVELOPMENTS LIMITED**

BEDFORD HIGHWAY,  
 BEDFORD  
 COUNTY OF HALIFAX  
 PROVINCE OF NOVA SCOTIA



LOT CLW  
 PID 40728081  
 Lands of  
**CS Manpar Inc.**  
 Book 7112 Page 1024RA  
 LRD Plan 311381

This **Encroachment License Agreement** made this \_\_\_ day of \_\_\_, 20\_\_.

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY**, a body corporate  
(“HRM”)

and

**UNITED GULF DEVELOPMENTS**, a body corporate  
(the “Licensee”)

### **Recitals**

- A. Whereas** the Licensee owns property at **805-819 Bedford Highway in Halifax (PID 00428623)** and there exists a **parking lot expansion** (the “Encroachment”) within the HRM street right of way as shown and described in Schedule “A”;
- B. And Whereas** by resolution of the Halifax Regional Municipal Council on **July 12, 2022**, the HRM agreed to give the Licensee 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.

**In consideration of the mutual promises contained in this agreement the parties agree as follows:**

### **License**

1. Subject to the terms of this license agreement, HRM hereby grants to the Licensee, its officers, servants, agents, and contractors the non-exclusive right at all times to enter on, over and under that portion of **Bedford Highway** identified in Schedule “A” to maintain the Encroachment.

### **Ownership**

2. The Licensee retains ownership of the Encroachment.

### **Relocation**

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

### **Maintenance**

4. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

5. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee's land.
6. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:
  - (1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and
  - (2) If the Licensee does not, within fifteen (15) business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.
7. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.
8.
  - (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7 within fifteen (15) business days of receiving notice of the costs of the work or expense incurred.
  - (2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.
9. The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the maintenance of the Encroachment and all work which involves the excavation of the street.

### **Street Maintenance**

10. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

### **Indemnity**

11. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages 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 Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.

(2) This section shall survive the termination of this license agreement.

### **Insurance**

12. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM

named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

### **Fees**

13. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is **360 square metres**.

14. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

### **Occupational Health and Safety Act, SNS 1996, c 7**

15. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

### **Termination**

16. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty (60) calendar days, unless otherwise agreed to between the parties.

(2) The Licensee may terminate this license agreement under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this licence agreement;
- (b) payment to HRM of all encroachment fees owed;
- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty (60) calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer") for the restoration of the street.

(3) If the Licensee does not, within the sixty (60) calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be



fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this Encroachment License Agreement shall not relieve the Licensee from any obligations under this Agreement including:

(a) paying all fees, costs and expenses owed to HRM under this Encroachment License Agreement; and

(b) restoring the street right of way to the satisfaction of HRM.

### **Notices**

17. Any written notice or communication relating to the administration of this license 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  
Executive Director of Public Works  
P.O. Box 1749  
Halifax, N.S. B3J 3A5**

and

**United Gulf Developments  
60 Walter Havill Dr, Suite 111  
Halifax, N.S. B3N 0A9**

18. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

19. This license agreement shall endure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

20. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

21. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

22. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

23. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

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

**SIGNED, SEALED AND DELIVERED** in  
The presence of:

**UNITED GULF DEVELOPMENTS**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS \_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that \_\_\_\_\_, one of the parties thereto, signed, sealed and delivered the same in his presence

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A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS \_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_, before me, the subscriber personally came and appeared before me \_\_\_\_\_ the subscribing witness to the within and 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 \_\_\_\_\_, its Mayor and \_\_\_\_\_, its Municipal Clerk, its duly authorized officers in his presence.

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A Commissioner of the Supreme Court of Nova Scotia

Schedule “A” – Plans Showing and Describing the existing Encroachment, including the type of encroachment, the civic address where such encroachment exists, and any other terms and conditions as may be necessary in the opinion of Council, the Inspector, or the Engineer.



**Figure 1:** (Left) This image shows the parking lot in front of the building in 2016. The yellow dashed line represents the approximate property boundary and the orange shaded area shows the parking lot that is assumed to have been constructed prior to the adoption of the *Encroachment By-law*. (Right) This image shows the parking lot in front of the building in 2020. The orange shaded area again shows the “existing” parking lot while the red shaded area shows the recent expansion within the street right of way.

**UPLAND**  
Urban Planning + Design Studio

63 King Street  
Dartmouth, Nova Scotia B2Y 2R7  
+1 (902) 423 0649  
info@uplandstudio.ca

**For:**  
Christopher Davis, Supervisor  
Right of Way Services, Traffic Management  
davisc@halifax.ca  
902.490.7462

16  
May  
2022

**Re:**  
Encroachment Agreement for Parking Lot at Former Travelers Motel,  
Bedford Highway (PID 00428623)

Dear Mr. Davis,

I am writing on behalf of our client, United Gulf Developments Ltd., to request an encroachment license for the parking lot for the former Travelers Motel on the Bedford Highway. The former motel is under development agreement to enable conversion to retail and restaurant uses and has now been converted.

The former motel building has been in existence for decades and is situated only a short distance away from the front property line. Due to its location, the motel has long used the Bedford Highway ROW as parking. This was prior to the implementation of By-law E-200, the Encroachment By-law.

The subject site is well-sized to accommodate enough parking to satisfy the Bedford Land Use By-law parking requirements. However, due to the location of the existing building such parking would be far--and physically inaccessible--from the commercial units it is intended to serve, and would result in the loss of mature trees on the property that were specifically identified by the public during the development agreement process as having community value. As a result, our client paved the long-standing gravel parking lot to serve the parking needs of the immediately-adjacent commercial units and improve the aesthetics of the site. During this process the parking area was expanded beyond its traditional boundaries to enable double-loaded parking (i.e. parking on both sides of the drive aisle).

I formally request an encroachment license under By-law E-200 for that portion of the parking lot that extends beyond the traditional boundaries until such time that our client can negotiate acquisition of some or all of the needed land to accommodate the parking lot.

**Sincerely,**

Original Signed

Ian Watson, MCIP