

7714

THIS AGREEMENT MADE THIS 8th DAY OF November A.D., 1991

BETWEEN:

ALLSCO BUILDING SUPPLIES LIMITED, (hereinafter called the "Developer")

OF THE FIRST PART

- and -

THE MUNICIPALITY OF THE COUNTY OF HALIFAX, a body corporate (hereinafter called the "Municipality")

OF THE SECOND PART

See X
B.6567
p.912

WHEREAS the Developer has good title to lands situated off Cole Harbour Road, in the County of Halifax, Province of Nova Scotia, which said lands (hereinafter called the "Property") are more particularly described in Schedules "A1" and "A2" of this Agreement;

AND WHEREAS pursuant to Subsection 3.6(n) of the Zoning By-law for Cole Harbour/Westphal, the Developer has requested permission to expand an existing industrial operation on the Property, as generally illustrated in Appendix "A" of this Agreement;

WITNESS that in consideration of the sum of One Dollar (\$1.00) now paid by the Developer to the Municipality (the Receipt of which is hereby acknowledged), the request to construct a building addition is agreed upon between the Developer and the Municipality subject to the following terms and conditions:

PART 1: DEFINITIONS

- 1.1 "PROPERTY" means the lands described in Schedules "A1" and "A2", as generally illustrated in Appendix "A" of this Agreement.
- 1.2 "BUILDING" means the existing principal structure and the addition permitted by this Agreement, as shown in Appendix "A" of this Agreement.
- 1.3 "ENGINEER" means the Director of Engineering and Works for the Municipality.
- 1.4 "SITE PLAN" means the plan submitted by the Developer and titled "Development Plan and Elevation" as drawn on May 17, 1991, and as last revised on August 27, 1991.
- 1.5 All other words shall carry their customary meaning except those defined under Part 2 of the Zoning By-law for Cole Harbour/Westphal where the meaning of such words is defined.

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PART 2: GENERAL REQUIREMENTS

- 2.1 Except as otherwise stipulated by this Agreement, the development of the Property shall comply with the requirements of the Zoning By-law for Cole Harbour/Westphal.
- 2.2 Subject to the provisions of this Agreement, the Developer shall be bound by all by-laws and regulations of the Municipality as well as by any applicable statutes and regulations of the Province of Nova Scotia.
- 2.3 Notwithstanding Sections 2.1 and 2.2, where the provisions of this Agreement conflict with those of any other provincial or federal regulations, by-laws or codes, the more stringent requirements shall apply.
- 2.4 The Developer shall assume full responsibility for meeting all obligations and financial liabilities required to meet all federal, provincial or municipal regulations, by-laws or codes in force at the present time, or at any time in the future.

PART 3: PERMITTED USES

- 3.1 The use of the Building shall be limited to the assembly, repair, storage, display and sales of residential windows and doors and the storage and sales of siding, and includes offices in conjunction with the main use.
- 3.2 No open storage or outdoor display shall be permitted on the Property.
- 3.3 The use of the existing dwelling on the Property shall be limited to its use as a single unit dwelling and to accessory offices and showrooms subject to the provisions of Section 4.3.

PART 4: DEVELOPMENT PERMIT

- 4.1 Prior to the issuance of a Development Permit for the Building addition, Lots S-X and M-X, described in Schedule "A" shall be consolidated in accordance with the municipal Subdivision By-law.
- 4.2 All parking and loading spaces, driveway areas, and landscaped areas, as shown on the site plan attached as Appendix "A", shall be completed within six (6) months of the issuance of an Occupancy Permit for the Building addition.
- 4.3 Where the existing dwelling is to be used for business purposes in accordance with Section 3.3, no Development Permit shall be issued until a site plan showing provisions for off-street parking has been approved by the Development Officer and provided that such a change of use does not involve the removal of any existing trees.

PART 5: SITE GRADING AND STORM DRAINAGE PLANS

- 5.1 All the requirements of this Part shall be satisfied prior to the issuance of a Development Permit for the Building addition.
- 5.2 A site grading plan which has been stamped and signed by a Professional Engineer shall be forwarded to and approved by the Engineer.
- 5.3 A storm drainage plan which has been stamped and signed by a Professional Engineer shall be forwarded to and approved by the Engineer and the Nova Scotia Department of Transportation and Communications.

PART 6: SITE PLAN ELEMENTS

- 6.1 Building locations, gross floor areas, signage, parking and loading spaces, driveway areas and landscaped and treed areas shall be as shown on the site plan attached as Appendix "A".
- 6.2 Sanitary sewer connections shall be as shown on the site plan attached as Appendix "A".

PART 7: BUILDING DESIGN

- 7.1 The Building shall not exceed twenty-five (25) feet in height.
- 7.2 The exterior appearance of the Building shall be as generally illustrated by the building elevation drawing attached as Appendix "A".

PART 8: ILLUMINATION

- 8.1 Lights used for the illumination of the Property shall be located and arranged so as to divert illumination away from adjacent properties.

PART 9: MAINTENANCE PROVISIONS

- 9.1 All parking spaces shall be clearly identified.
- 9.2 All parking, loading and driveway areas shall be maintained with a stable surface that is treated to prevent the raising of dust or loose particles.
- 9.3 All landscaped and treed areas shall be kept in a neat and tidy manner.
- 9.4 Any individual tree identified on the site plan attached as Appendix "A" shall be replaced by a mature tree if it dies.

PART 10: VARIANCES AND MINOR AMENDMENTS

- 10.1 Notwithstanding Section 10.1, due to unforeseen circumstances, variances to the site plan elements listed in Section 4.1 may be granted by the Development Officer, provided that such a variance is minor in that it does not violate the intent of this Agreement. A five (5) per cent variance may be considered provided that any other necessary approvals are received.
- 10.2 For the purposes of this Agreement, the following matters are deemed not substantial and may be considered a minor amendment, subject to a resolution by Municipal Council:
 - (a) a change of use to uses permitted by Section 18.1 of the Zoning By-law for Cole Harbour/Westphal, provided that the use is not obnoxious and does not involve open storage and outdoor display; and
 - (b) the reconstruction or replacement of the existing principal structure, subject to Part 7 of this Agreement, provided that such reconstruction or replacement does not result in the further reduction of any required ~~area~~.

Province of Nova Scotia
County of Halifax

I hereby certify that the within instrument was recorded in the Registry of Deeds Office at Halifax in the County of Halifax, N. S., at 10:40 o'clock A. M., on the day of NOV 8 A.D. 19 91 in Book No. 5158 at Pages 1114-1120 as Document Number 15111

Deputy
[Redacted Signature]
Registrar of Deeds for the Registration District of Halifax County

Original Signed

PART 11: ADMINISTRATION AND ENFORCEMENT

- 11.1 Upon breach by the Developer of any of the terms or conditions of this Agreement, the Municipality may, after thirty (30) days' notice in writing to the Developer of the breach, enter and perform any of the terms and conditions of the Agreement. It is agreed that all reasonable expenses whether arising out of the entry or from the performance of the terms and conditions may be recovered from the Developer by direct suit and shall form a charge upon the Property.
- 11.2 This Agreement shall run with the land and be binding upon the Developer's heirs, assigns, mortgagees, lessors, and successors, of the Property.
- 11.3 This Agreement shall be filed by the Municipality in the Registry of Deeds at Halifax, Nova Scotia, and shall form a charge or encumbrance upon the Property.
- 11.4 The Developer shall pay the costs of recording and filing all documents in connection with this Agreement.
- 11.5 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any other provisions.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this 8th day of November, A.D., 1991.

SIGNED, SEALED AND DELIVERED)
in the presence of)

[Redacted Signature]

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

[Redacted Signature]

Original Signed

ALLSCO BUILDING SUPPLIES LIMITED
[Redacted Signature] President
MUNICIPALITY OF THE COUNTY OF HALIFAX
[Redacted Signature] WARDEN
[Redacted Signature] CLERK

SCHEDULE "A1"

LOT S-X

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ALL THAT CERTAIN Lot of Land, shown as Lot "S-X" on a plan titled: "Plan of Subdivision showing Lot "M-X", comprising a portion of Lot "M" owned by Allsco Building Supplies Limited, also Lot "S-X", comprising a portion of Lot "M", (Parcel "X"), and the whole of Lot "S" owned by Donald Lahanky and Anne Lahanky, at Cole Harbour, Halifax County, Province of Nova Scotia," prepared by Frank Longstaff Surveying Limited and signed by Frank Longstaff, Nova Scotia Land Surveyor; which said Plan is dated the 1st day of December, A.D. 1989 and approved by the Development Officer for the Municipality of the County of Halifax on the 2nd day of February, A.D. 1990, and which said Lot "S-X" may be more particularly described as follows:

BEGINNING at the juncture of the southern boundary of Cole Harbour Road and the eastern boundary of Lot "S-X" as shown on said Plan.

THENCE to run $N86^{\circ}-24'-24''E$ along said boundary of Cole Harbour Road, a distance of 252.40 feet unto a point.

THENCE to run $S00^{\circ}-32'-36''E$, bounded on the east by Land now or formerly owned by Seaport Contractors Limited, a distance of 130.62 feet unto a point.

THENCE to run $S85^{\circ}-25'-26''W$, bounded on the south by said Land now or formerly owned by Seaport Contractors Limited, a distance of 240.30 feet unto the south-eastern corner of Lot "M-X" aforesaid.

THENCE to run $N05^{\circ}-48'-01''W$ along the eastern boundary of said Lot "M-X", a distance of 134.65 feet unto the place of beginning.

CONTAINING: 32,626 square feet, more or less.

BEARINGS are referred to the Nova Scotia 3° Modified Transverse Mercator Grid, 1976 adjustment, Zone 5, Central Meridian $64^{\circ}-30'W$.

SCHEDULE "A2"

LOT M-X

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ALL THAT CERTAIN Lot of Land, shown as Lot "M-X" on a plan titled: "Plan of Subdivision showing Lot "M-X", comprising a portion of Lot "M" owned by Allsco Building Supplies Limited, also Lot "S-X", comprising a portion of Lot "M", (Parcel "X"), and the whole of Lot "S" owned by Donald Lahanky and Anne Lahanky, at Cole Harbour, Halifax County, Province of Nova Scotia," prepared by Frank Longstaff Surveying Limited and signed by Frank Longstaff, Nova Scotia Land Surveyor; which said Plan is dated the 1st day of December, A.D. 1989 and approved by the Development Officer for the Municipality of the County of Halifax on the 2nd day of February, A.D. 1990, and which said Lot "M-X" may be more particularly described as follows:

BEGINNING at the juncture of the southern boundary of Cole Harbour Road and the north-eastern boundary of Lot 8, now or formerly owned by W.D. Morash Limited.

THENCE to run $N86^{\circ}-24'-24''E$ along said boundary of Cole Harbour Road, a distance of 111.40 feet unto the north-western corner of Lot "S-X", as shown on said Plan.

THENCE to run $S05^{\circ}-48'-01''E$, along the western boundary of said Lot "S-X", a distance of 134.65 feet unto the south-western corner of said Lot "S-X".

THENCE to run $S85^{\circ}-25'-26''W$, along the northern boundary of Land, now or formerly owned by Seaport Contractors Limited, a distance of 72.12 feet unto the north-eastern boundary of Land now or formerly owned by W.D. Morash Limited aforesaid.

THENCE to run $N21^{\circ}-43'-37''W$ along said north-eastern boundary of said Land, now or formerly owned by W.D. Morash Limited and in continuation thereof along the north-eastern boundary of Lot 8 aforesaid, now or formerly owned by said W.D. Morash Limited, a distance of 142.89 feet, or unto the place of beginning.

CONTAINING: 12,418 square feet, more or less.


BEARINGS are referred to the Nova Scotia 3° Modified Transverse Mercator Grid, 1976 adjustment, Zone 5, Central Meridian $64^{\circ}-30'W$.

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX SS)

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ON THIS 14th day of November, A.D., 1991,
before me, the subscriber, personally came and appeared
Jeanette Mackay, a subscribing witness to the foregoing Indenture, who
having been by me duly sworn, made oath and said that MUNICIPALITY OF THE
COUNTY OF HALIFAX, one of the parties thereto, caused the same to be
executed in its name and on its behalf, and its corporate seal to be
thereunto affixed by the hands of Lesley Giffen its Warden
and S. MacKay its Municipal Clerk the proper officers duly
authorized in that behalf and in her presence.

Original Signed


COMMISSIONER OF THE SUPREME
COURT OF NOVA SCOTIA
LOIS SLAUNWHITE
A Commissioner of the Supreme
Court of Nova Scotia