

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: February 16, 2022

SUBJECT: **Permanent Encroachment of a Ground Sign at 3B Burley Court, Dartmouth**

ORIGIN

Application GP-2021-03061 by Priority Permits Ltd. for a permanent encroachment of a Ground Sign constructed in the HRM right-of-way.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Subsections:

324 (1) "Where any part of a street, other than the travelled way, has been built upon and it is determined that the encroachment was made in error, the Engineer may permit, in accordance with any by-law made pursuant to subsection (2), the encroachment to continue until such time as the building or structure encroaching upon the street is taken down or destroyed.

(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. 2008, c. 39, s. 324."

Encroachment By-Law E-200:

Section 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.

Section 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,..." The balance of this section sets forth encroachments which may be approved by the Engineer.

Streets By-Law S-300

Section 23. (1) No person shall:

- (a) make any excavation in a street;
- (b) install or repair any facility on a street
- (c) make use of the street, or any portion thereof, for any activity other than as a right of way or a use already regulated under this or any other by-law of the Halifax Regional Municipality,

without first obtaining a Street and Services Permit from the Engineer.

Administrative Order Number 15 Respecting License, Permit and Processing Fees:

Schedule A, S.6C. The table set forth in this section states that, in accordance with section 5.2(2) of the Encroachment Bylaw an encroachment of up to 1.5 square metres shall be subject to a one-time fee of \$60.00.

Schedule A, S.6C. The table set forth in this section states that, in accordance with section 6(c) of the Encroachment Bylaw, and encroachment that is other than those described in paragraph 4(a)(iv) of Bylaw E-200 shall be subject to an annual rental fee in the amount of \$1.00 per 0.1 square metres of such encroachment, with a minimum fee of \$10.00.

RECOMMENDATION

It is recommended that Halifax Regional Council approve a 1.2 m² Encroachment License Application for a ground sign to be constructed within the HRM right-of-way at civic 3B Burley Court, Dartmouth.

BACKGROUND

Priority Permits Ltd. has requested permission to construct a ground sign within the public street right-of-way for Access Storage located at 3B Burley Court. Since the proposed ground sign will be located within the right-of-way, a typical permit for a ground sign cannot be issued by staff. Permits for ground signs are only issued on private properties in accordance with the Land Use By-law.

Under the *Encroachment By-law E-200*, the Engineer may authorize encroachment licenses for:

- canopies and awnings;
- built elements that are encroaching no further towards the curb than other existing building elements;
- pole mounted infrastructure;
- installation of building equipment such as HVAC and exhaust fans;
- underground conduit;
- public facilities;
- barrier free accesses;
- infrastructure that facilitates construction of a building; and
- decorative building features required by a by-law.

All other types of encroachments in the HRM right-of-way are granted or refused on a case-by-case basis at the full discretion of Regional Council.

In accordance with *By-law E-200*, ground signs located within the HRM street right-of-way require Regional Council approval, and if approved, are also subject to a one-time fee and an annual fee as outlined in Administrative Order 15.

DISCUSSION

This ground sign is requested to provide clear identification of the location of Access Storage. Due to the nature of the property layout and property boundaries, there are limited options for sign placement on private property that would provide clear direction to customers.

There are no anticipated safety concerns of obstructions to the public associated with the proposed location of the ground sign. Burley Court is a cul-de-sac located in Burnside Industrial Park. Therefore, traffic volumes on this street are low, and there is not significant pedestrian activity. The sign contains static messaging with no flashing or moving images, posing no distraction to traffic. The sign would provide clear direction to vehicular traffic and make the site easily identifiable.

Information provided by the applicant in support of this request including a site plan, rendering and request letter are contained within Attachments A, B and C, respectively.

Encroachment Agreement

If Regional Council approves the encroachment, the Municipality's standard Encroachment Agreement (Attachment D) would be used to govern the encroachment. Conditions that staff would seek to have included in the Encroachment Agreement include:

- a) construction and maintenance of the encroachment must comply with the Streets By-law, S-300;
- b) the Encroachment is required to meet current HRM Municipal Design Guidelines;
- c) the Applicant would be responsible for ownership and maintenance of the approved encroachment;
- d) if requested by HRM, the encroachment would be removed or relocated by the property owner(s) and the area within the rights-of-way reinstated at their expense; and
- e) record as-built drawings of the ground sign and related information must be provided to HRM.

Right-of-Way Permit

In accordance with the Streets By-Law, the installation of the sign would require a Right-of-Way Permit issued by the Engineer. The Encroachment Agreement would be effective when a Right-of-Way Permit is issued.

License Fee

Administrative Order 15 states that all permanent encroachments within the HRM street right-of-way shall be subject to a one-time fee of \$60.00 for encroachments up to 1.5 square meters in area.

Annual Fee

Once an Encroachment Agreement is executed, the property owner would be subject to an annual fee for the encroachment as outlined in Administrative Order 15.

Administrative Order 15 states that all permanent encroachments within the HRM street right-of-way shall be subject to an annual rental fee of \$1.00 per 0.1 square metres (\$10 per square metres) of such encroachment, with a minimum fee of \$10.00. The encroachment area of the Ground Sign that will lie within the HRM Right of Way on Burley Court would be 1.2 square meters. Therefore, the encroachment would be subject to an encroachment fee of \$12.00 per year.

In consideration of the above, staff recommend approval of the encroachment request.

FINANCIAL IMPLICATIONS

If Regional Council chooses to approve the encroachment, the annual revenue from this encroachment would be \$12.00 per year in addition to revenue collected from the one-time license fee of \$60.00. Cost Centre R112-4912, Right-of-Way Approval – Signs and Encroachments would be used to record this new annual revenue.

RISK CONSIDERATION

No risk considerations were identified.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

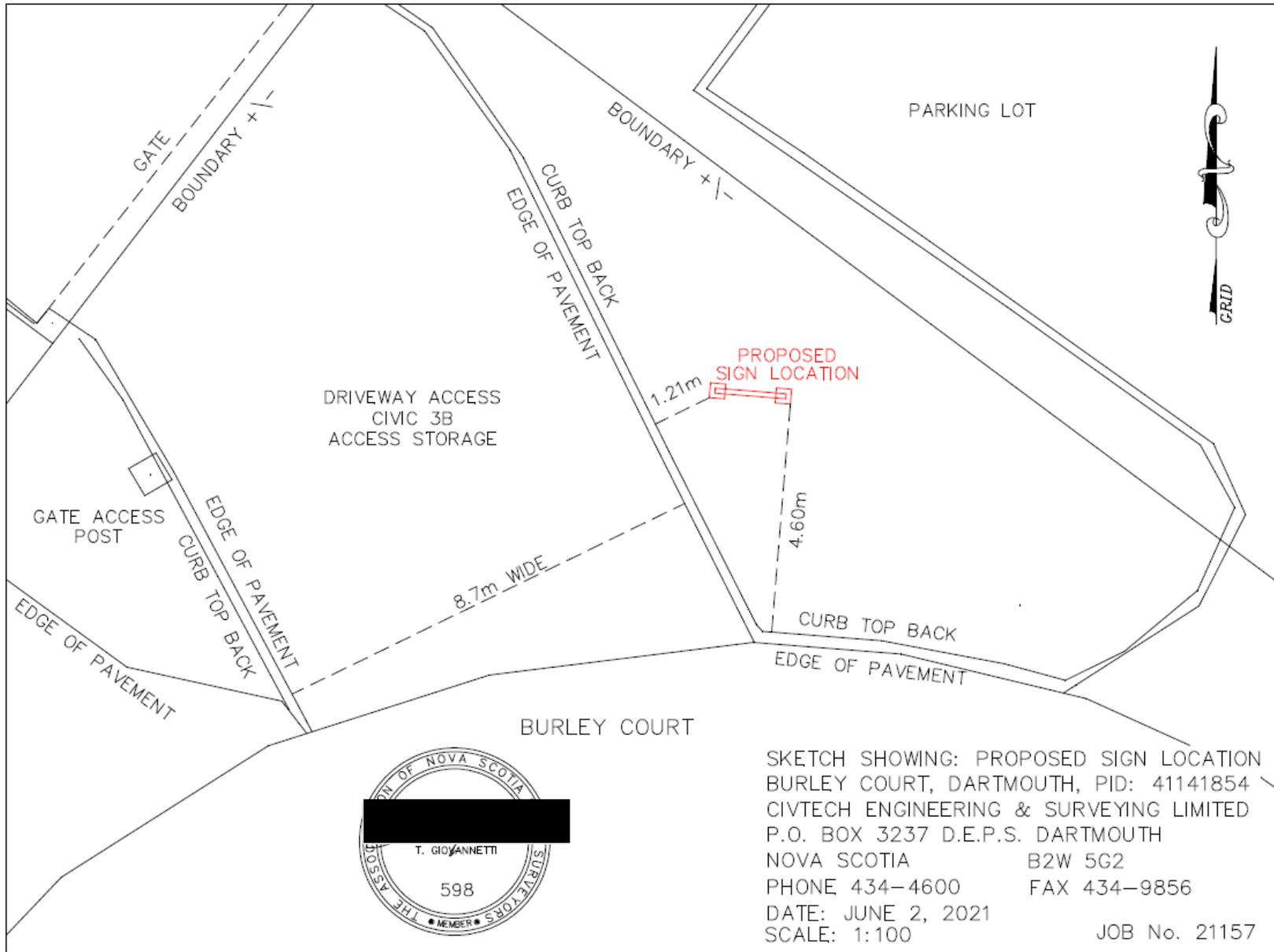
Regional Council may choose to decline the permanent encroachment application.

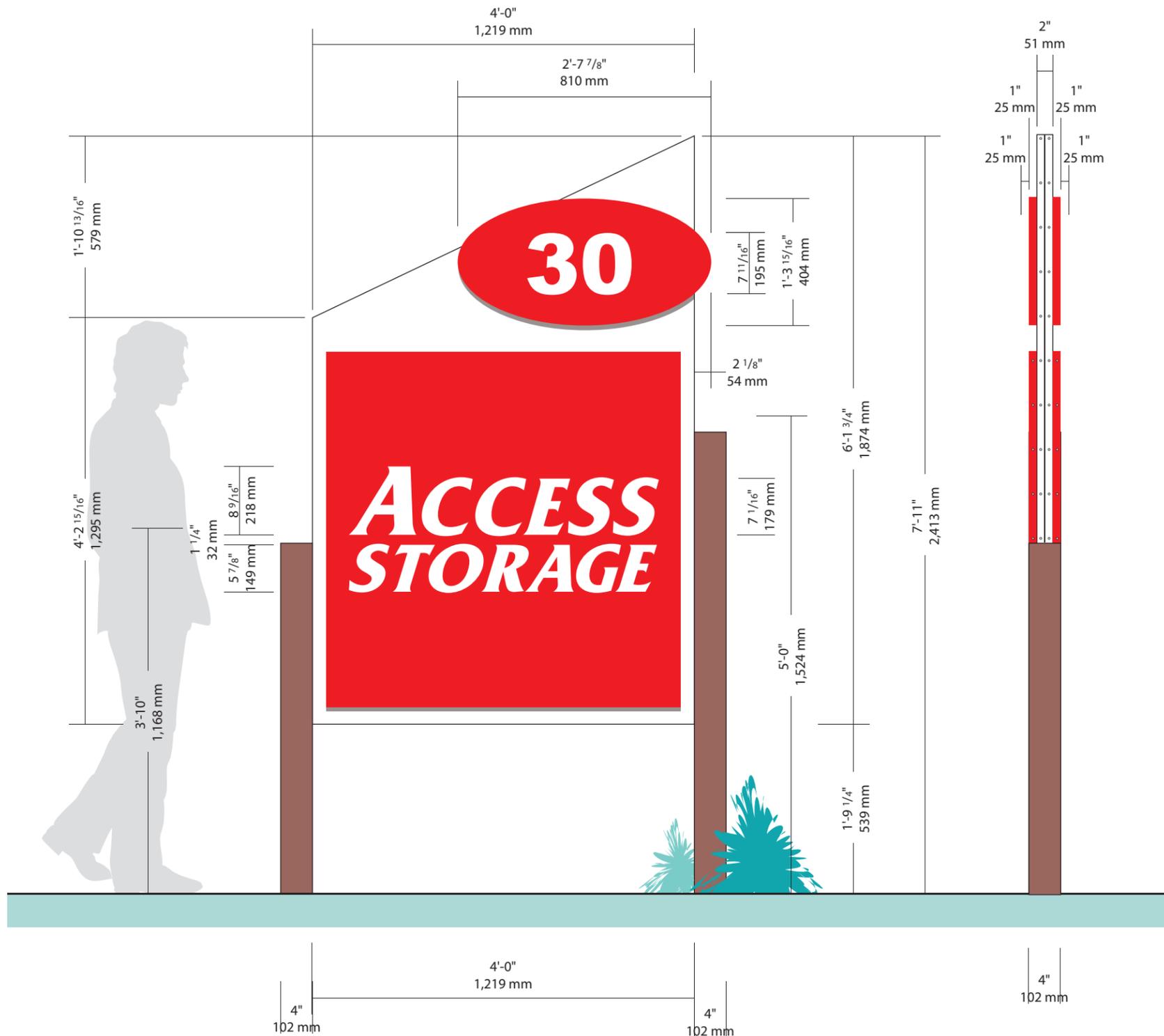
ATTACHMENTS

Attachment A – Site Plan of Ground Sign Location
Attachment B – Proposed Encroachment Renderings
Attachment C – Encroachment Request Letter from Applicant
Attachment D – Draft Encroachment Licence

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: Paolo Mont, EIT., Program Engineer, Development Engineering 902.219.0171





Specifications

- Supply & install one (1) double face non-illuminated ground sign
- 2" wide cabinet to be break formed aluminum to fit over a perimeter 2" HSS frame (vertical seam on sides with countersunk screws)
- Oval: 1" thick cut acrylic
- Oval - Painted to match PMS 199C
- "30" - 3M 3635-20B white block-out vinyl
- Square cabinet 1" wide break formed aluminum
- Cabinet painted White
- Access Storage graphics - 3M vinyl face applied
- 3M Regal Red 3M-3630-83 / PMS 199C
- White
- 4" X 4" HSS posts with painted finish (TBD) - direct bury

Project ID	
CM2-59997	
Date:	12-04-2020
Scale:	3/8"=1'-0"
Sales:	C. McGrath
Designer:	J. Foster

Rev. #:	
Date:	

Revision Note:

Conceptual

Information Required:

Master

Electrical

120V 347V

Other _____

Customer Approval

Signature
Jan 18th, 2021
 MM/DD/YYYY

It is the Customer's responsibility to ensure that the structure of the building is designed and constructed to accept the installation of the signs being ordered. Please ask PSG to provide further details if required.

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Access Storage
 Site: 0133
 3B Burley Court
 Dartmouth, NS

Sign Item

SG1



LETTER OF RATIONALE

Location: 3B Burley Crt, Dartmouth NS

AUTHOR: Serena Crawford

Priority Permits Ltd

DATE: August 23, 2021

SUMMARY OF PROPOSAL:

Access storage is proposing to install 1 double faced non-illuminated ground sign on Municipal Right of Way. The sign measures 2.4m high by 1.2m wide.

RATIONALE:

This purpose of this sign is to provide clear identification of the location of Access Storage. Due to the nature of the property layout and property boundaries, there are no other suitable locations for this sign that would provide clear direction to customers. (See Fig 1 below)

Fig 2 also illustrates the limited options for sign placements on private property. As it stands, proper identification of the property especially for vehicular traffic is lacking.

FIG 1



FIG 2



The proposed location of the sign would pose no safety concerns or obstructions to the public. As this is not a thru street, traffic would be limited and there wouldn't be much public activity in this area. The sign contains static copy with no flashing or moving images; posing no distraction to traffic. Moreover, the sign would provide clear direction to vehicular traffic, and make the site easily identifiable.

We request Council to please consider allowing this sign so Access Storage can have proper business identification and provide clear direction to their patrons.

Thank you in advance for your consideration,

Serena Crawford

Project Manager – Canada except BC

Office: 289-389-8951

Email: serena@prioritypermits.com

Eastern Office: 331 Parkdale Ave N, Hamilton ON, L8H 5Y1

www.prioritypermits.com



This **Encroachment License Agreement** made this ____ day of _____, 20____.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
("HRM")

and

Storage Vault Canada Inc.
(the "Licensee")

Recitals

- A. **Whereas** the Licensee owns property at **3B Burley Court, Dartmouth** and wishes to construct a **Ground Sign** (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 _____, 20____, 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 encroachment 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 **Burley Court, Dartmouth**, identified in Schedule "A" to install and 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.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the

Encroachment and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").

(4) For the purposes of the construction of the Encroachment, the Licensee agrees:

(a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;

(c) that the Encroachment will be done in accordance with the approved plans; and

(d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

Maintenance

6. 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.

7. 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.

8. 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 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.

9. 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.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 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.

Street Maintenance

11. 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

12. (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

13. 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

14. 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 1.2 square metres.

15. 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

16. 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

17. (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 8 and 9; and
 - (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty 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 8 and 9;
 - (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 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 for the restoration of the street.
- (3) If the Licensee does not, within the sixty 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 license agreement shall not be effective until the Licensee has paid all fees, costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

Notices

18. 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
Director of Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Storage Vault Canada Inc.
4305 Fairview St.
Burlington, ON L7L 6E8

19. 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.

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

21. 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.

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

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

24. 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:

Access Storage

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

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.

A Commissioner of the Supreme Court of Nova Scotia

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