

THIS AGREEMENT made this 25th day of February, 2004.

BETWEEN:

G.M.
GAUDET ENTERPRISES LIMITED
 (hereinafter called the "Developer")

HALIFAX COUNTY REGISTRY OF DEEDS			
I certify that this document was registered as shown here.			
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OF THE FIRST PART

-and-

APPROVED
 AS TO FORM
 Municipal Solicitor

HALIFAX REGIONAL MUNICIPALITY

a body corporate, in the County of
 Halifax, Province of Nova Scotia
 (hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer ^{is} ~~will become~~ the registered owner of certain lands located at 4165 Highway 333, being lot 5A of the Giles Gaudet subdivision and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow a sixteen unit Motel on the Lands pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Land Use By-law for Planning District 4;

AND WHEREAS the Western Region Community Council approved this request at a meeting held on January 26, 2004, referenced as Municipal Case Number 00618;

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 The Developer agrees that the Lands shall be subdivided, developed and used only in accordance with and subject to the terms and conditions of this Agreement.
- 1.2 Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Land Use By-law for Planning District 4, as may be amended from time to time.
- 1.3 Except as otherwise provided for herein, the subdivision of the Lands shall comply with the requirements of the Subdivision By-law for Halifax County, as may be amended from time to time.

- 1.4 Pursuant to Section 1.2 and 1.3, 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 and Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia, and the Developer or lot owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.
- 1.5 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 and Subdivision 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.
- 1.6 The Developer and each lot owner 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 regulations, by-laws or codes applicable to any lands owned by the Developer or lot owner.
- 1.7 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: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 Use

The Developer shall not develop or use the lands for any purpose other than a sixteen unit motel, restaurant, and lounge and shall construct on the lands a building which, in the opinion of the Development Officer, is substantially in conformance with plans filed in the Halifax Regional Municipality Planning and Development Services Department as Case 00618 and attached as the following schedules to this agreement.

Schedule "A"	Legal Description of the Lands
Schedule "B"	Elevation
Schedule "C"	Site Plan

2.2 Design Guidelines

- 2.2.1 The motel shall be clad in gray vinyl siding with white trim and a gray or black asphalt shingle roof, all of which to match the adjacent restaurant/lounge. For greater certainty, all buildings, shall have the same cladding and roof colour.

2.3 Access and Parking

- 2.3.1 The Developer agrees to provide vehicular access to the site as illustrated on Schedule 'B'. The access shall be approved by the NS Department of Transportation and Public Works, and a copy of such approval shall be submitted to the Development Officer prior to the issuance of any building permit. Changes to the location of the access, as necessitated by the requirements of the NS Department of Transportation and Public Works, may be approved by the Development Officer.
- 2.3.2 The Developer agrees to provide a detailed site plan illustrating the parking area, lot traffic, and storm drainage design to the NS Department of Transportation and Public Works in conjunction with a building permit prior to construction.
- 2.3.3 The parking areas shall be constructed in conformance with standards for parking lots for the mobility disabled and loading space requirements of the land use by-law. The general location of the parking area shall be as illustrated on Schedule "B".

2.4 Signs

Only those signs permitted by Section 5.4 of the Planning District 4 Land Use By-law shall be permitted except that one sign, which may be double sided, and not exceeding eight square feet in area per face containing the name of the building or operator may be permitted at or near the driveway entrance.

2.5 Well

The Developer shall obtain provincial approval for any existing or new potable water supply prior to the issuance of an occupancy permit for the motel.

2.6 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the motel, restaurant and lounge, walkways, parking areas and driveways, and the maintenance of all landscaping, trimming and litter control, and snow removal/salting of walkways, driveways, and parking areas.

2.7 Landscaping

2.7.1 Landscaping shall include the removal of trees and shrubs on the west slope adjacent to the road in front of the motel and restaurant/lounge. The vegetation shall be replaced by a two-tier stone wall in locations shown on Schedule "B". All of the terraced area shall be covered with mulch. The terracing shall be in place prior to the issuance of occupancy permits.

2.7.2 Measures shall be taken to reduce the amount of run-off from the site during construction subject to requirements from the Department of Environment and Labour and the Development Engineer.

2.8 Open Storage

Refuse containers and waste compactors shall be confined to the loading areas of the existing building and the motel and shall be screened by opaque fencing and/or suitable landscaping.

2.9 Hours of Operation

Between the hours of 12:00 a.m. and 7:00 a.m., seven days a week, the Developer shall enforce a Quiet Time Policy for the occupants of the motel and their guests.

PART 3: AMENDMENTS

3.1 The provisions of this Agreement relating to the following matters are identified as and shall be deemed non-substantial and may be approved by resolution of Western Region Community Council:

- changes in the exterior design, building footprint, and colour of cladding and shingles, provided such changes are minor in nature and serve to maintain or enhance the intent of this Agreement.

3.2 Amendments to any matters not identified under Section 3.1 shall be deemed substantial and may only be amended in accordance with the approval requirements of the Municipal Government Act.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

4.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall pay or reimburse the Municipality for the registration cost incurred in recording such documents.

- 4.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 4.3 In the event that construction of the project has not commenced within two years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, "commencement of construction" shall mean completion of the footings for the proposed building.
- 4.4 If the developer fails to complete the development, or after five years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, 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;
 - (c) discharge this Agreement.

PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

- 5.1 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 one day of receiving such a request.
- 5.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) 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 defence based upon the allegation that damages would be an adequate remedy;
 - (b) the Municipality may enter onto the Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property 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; and/or
- (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

SIGNED, SEALED AND DELIVERED
in the presence of

Pauline M. Marcus

Kelly MacKinnon
Witness

Edgar [Signature]
Witness

G.M.

~~GADET~~ GAUDET ENTERPRISES LIMITED

)
)
) Per *Giles Gaudet*
) President

) Per _____

) HALIFAX REGIONAL
) MUNICIPALITY

)
) Per *[Signature]*
) Mayor *Peter J. Kelly*

) Per *Jan Gibson*
) A / Municipal Clerk

SCHEDULE "A"

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ALL that certain lot, piece or parcel of land situate, lying and being at Shad Bay, in the County of Halifax and being lot 5 as shown on a plan of lands of Giles Gaudet, Shad Bay, Nova Scotia, certified by Kenneth V. Reardon, P.L.S. on May 27th, 1971, said lot being more particularly described as follows:

BEGINNING at a stake on the eastern boundary of the Shad Bay Highway where it is intersected by the northern boundary of lot 2;

THENCE running S61°30'10"E along the northern boundary of lot no. 2 a distance of 160 feet to the northeast corner of lot no. 2;

THENCE running S24°22'25"W along the eastern boundary of lots 2 and 1, a distance of 176.94 feet to the southeast corner of lot no. 1;

THENCE running N69°45'W along the southern boundary of lot no. 1 a distance of 44 feet to the northeast corner of lot C;

THENCE running S20°15'W along the eastern boundary of lots C and B a distance of 130 feet to the northern boundary of lot A-2;

THENCE running S69°45'E along the northern boundary of lot A-2 a distance of 12.7 feet more or less to the northeastern corner of lot A-2;

THENCE running S29°00'W along the eastern boundary of lots A-2 and A, a distance of 84.4 feet more or less to intersect the northern boundary of a lot of land owned, now or formerly, by one Duggan, at a point 116 feet easterly from the eastern boundary of the Shad Bay Highway, as measured along the division line between lot A and the Duggan lot;

THENCE running S61°00'E along lands of the Heirs of David Redmond a distance of 201.0 feet more or less to the

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- 2 -

THENCE running N29°00'E along the northwest boundary of lot no. 1 a distance of 604.9 feet more or less to a point;

THENCE running N61°00'W a distance of 440.4 feet more or less to a stake on the eastern boundary of the Shad Bay Highway;

THENCE running southwesterly along the various courses of the eastern boundary of the Shad Bay Highway to the place of beginning, being distant 213.7 feet more or less on a bearing of S32°54'19"W from the last described point.

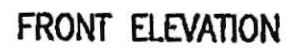
Province of Nova Scotia
County of Halifax

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 2:26 o'clock P. M., of
the 25th day of February
A. D. 1972 In Book Number 2536
at Pages 430 - 433

Registrar of Deeds for the Registration District
of the County of Halifax

Schedule B

**4165 Prospect Road
or 11 Osprey Drive
Shad Bay**



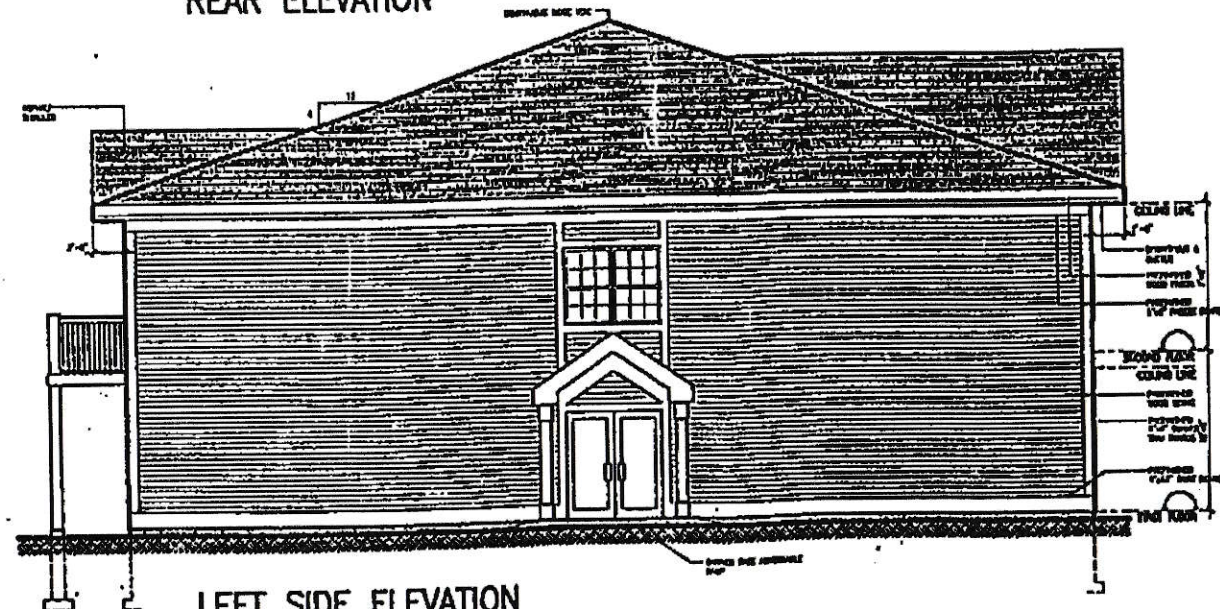
339

Schedule B

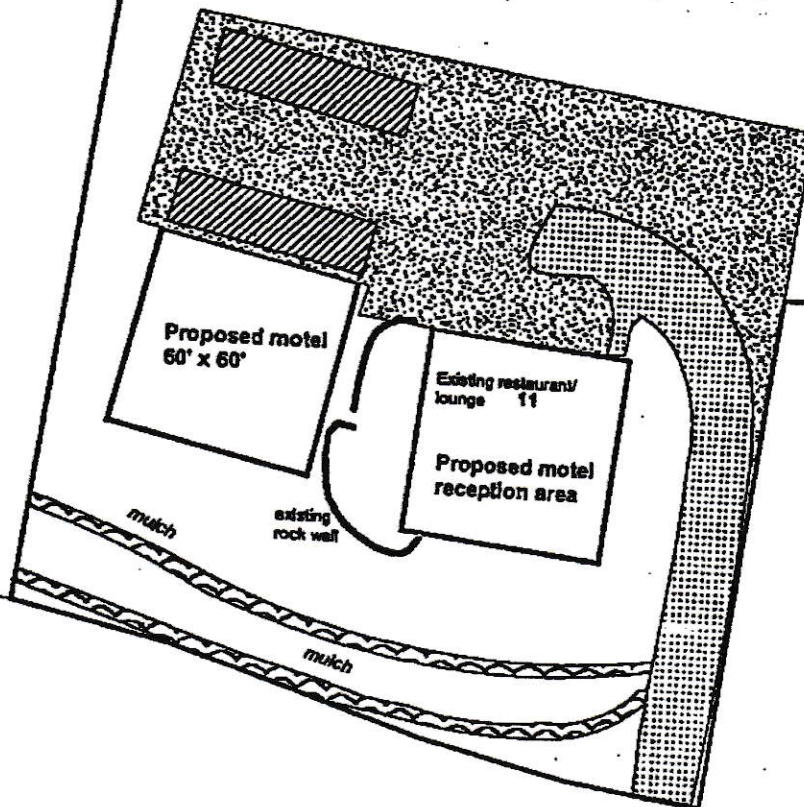
**4165 Prospect Road
or 11 Osprey Drive
Shad Bay**



REAR ELEVATION



LEFT SIDE ELEVATION



Site Plan Schedule C

4165 Prospect Road
or 11 Osprey Drive
Shad Bay

Prospect Plan Area

Features

-  building
-  parking
-  driveway
-  paved area
-  stone wall

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

0 20 m

This map is an unofficial reproduction
of a portion of the zoning map for the
Prospect Plan Area.

HRM does not guarantee the accuracy
of any representation on this plan.

01 December 2003

Case 00618

file: Maps3\work\planning\hlfry\casemaps\00618.mxd (HEC)

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 16 day of February, A.D., 2004, before me, the subscriber personally came and appeared Pauline McMehe a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that SHES GAUDET, one of the parties thereto, signed, sealed and delivered the same in his presence.

ENTERPRISES LTD
[Signature]

[Signature]
A Barrister of the Supreme Court
of Nova Scotia
ANTHONY TAN

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 24th day of February, A.D., 2004, before me, the subscriber personally came and appeared K. McNamee & F. Vin Garden a 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 Jan Gibson, its Deputy Municipal Clerk, its duly authorized officers in his presence.

[Signature]
A Barrister of the Supreme Court
of Nova Scotia

HERRYLL MURPHY
A Commissioner of the
Supreme Court of Nova Scotia