



Committee of the Whole Excerpts
September 10, 2024

ENCROACHMENT AGREEMENT 98 GERRISH STREET (PID 45057502) EXCERPT

An application was received on August 8, 2024, from Jeff Walker requesting permission to allow the installation of an accessible ramp to encroach on the Municipal sidewalk to provide an accessible entrance to a new business on Gerrish Street. 98 Gerrish Street is owned by Lilac Holdings Inc.; Scott and Timothy Shearer are the Directors of the company.

The recommended motion was that Committee of the Whole recommend that ...

COUNCIL ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE PROPERTY OWNER AT 98 GERRISH STREET (PID 45057502) IN WINDSOR TO ALLOW THE INSTALLATION OF AN ACCESSIBLE RAMP ON THE MUNICIPAL SIDEWALK, IN A MANNER SUBSTANTIVELY THE SAME AS THE DRAFT SET OUT IN ATTACHMENT A TO THE REPORT ENTITLED ENCROACHMENT AGREEMENT DATED SEPTEMBER 10, 2024.



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information ☐	Recommendation ☒	Decision Request ☐	Councillor Activity ☐
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To: Mayor Zebian and Members of West Hants Regional Municipal Council

Submitted by: _____
Sara Poirier, Director of Planning and Development

Todd Richard, Director of Public Works

Date: 2024-09-24

Subject: Encroachment Agreement: 98 Gerrish Street (PID 45057502), Windsor

LEGISLATIVE AUTHORITY

Town of Windsor By-law #10, Streets and Sidewalks By-law

RECOMMENDATION

Committee of the Whole forwarded a positive recommendation to Council. Should Council wish to approve the revised draft encroachment agreement the following motion would be in order:

...that Council enter into an encroachment agreement with the property owner at 98 Gerrish Street (PID 45057502) in Windsor to allow the installation of an accessible ramp on the Municipal sidewalk, in a manner substantively the same as the draft set out in Attachment A to the report entitled Encroachment Agreement dated September 24, 2024.

BACKGROUND

Property ☒	Public Opinion ☐	Environment ☐	Social ☐	Economic ☐	Councillor Activity ☐
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An application was received on August 8, 2024, from Jeff Walker requesting permission to allow the installation of an accessible ramp to encroach on the Municipal sidewalk to provide an accessible entrance to a new business on Gerrish Street. 98 Gerrish Street is owned by Lilac Holdings Inc.; Scott and Timothy Shearer are the Directors of the company. Tim Shearer provided authorization for Jeff Walker to apply on their behalf.

On September 10, 2024, the draft encroachment agreement was presented to Committee of the Whole (Attachment B). Committee of the Whole recommended in favour of the draft encroachment agreement for 98 Gerrish Street.

Staff requested legal review of the draft encroachment agreement prior to Council approval. The legal review recommended clarification be added to Section 2.0 to ensure the owner is responsible for any damage to the structure due to snow clearing operations and to Section 5.0 to ensure the owner has liability insurance in the event that someone is injured on the ramp in the future. They also recommended a few minor grammatical changes. The revised draft encroachment agreement is included as Attachment A.

ATTACHMENTS

Attachment A	Revised Draft Encroachment Agreement
Attachment B	2024-09-10 Staff report to CoTW - Encroachment Agreement: 98 Gerrish Street (PID 45057502), Windsor

CHIEF ADMINISTRATIVE OFFICER REVIEW

I support the recommendation.

Report Prepared by: _____
Sara Poirier, Director of Planning and Development

Todd Richard, Director of Public Works

Report Approved by:  _____
Mark Phillips, Chief Administrative Officer

Attachment A



ENCROACHMENT AGREEMENT

THIS AGREEMENT made this day of , 2024.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

LILAC HOLDINGS INC., a body corporate, with a head office at 14 Water Street, Windsor, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered Owner of the parcel of land located at 98 Gerrish Street in Windsor (PID 45057502), hereinafter referred to as the “Property”; and

WHEREAS the Owner has requested that the Municipality enter into an encroachment agreement to permit an accessible ramp for the Property to be constructed within the public right-of-way; and

WHEREAS the Council of the Municipality, at a meeting held on **Month Day**, 2024, authorized this encroachment for the Property in accordance with the terms and conditions set out in the Town of Windsor Streets and Sidewalks By-law and as contained in this Agreement.

1.0 Definitions

In this Agreement, unless the context otherwise requires:

- (a) “Engineer” means the Engineer as defined by the Municipal Government Act.

2.0 License

Subject to the terms of this Agreement, the Municipality hereby grants the Owner the non-exclusive right for the placement and maintenance of an accessible ramp at the Property on the paved right-of-way fronting 98 Gerrish Street in accordance with the guidelines and requirements of the Municipal Building Inspector. The accessible ramp is to project no more than four (4) feet from the face of the building. In addition to the construction specifications required by the Municipal Building Inspector under the Building Code, the Owner agrees that the structure will be constructed in a manner that acknowledges and addresses the snow loads and stress that the structure will be subjected to as a result of the Municipality’s snow plowing and other sidewalk maintenance operations. The Owner acknowledges that the structure will, to some degree, impair the ability of the Municipality to clear and store snow from the sidewalk in this area and that they shall ensure that snow and ice are removed from the sidewalk area adjacent to this structure in order to provide a safe walking area for pedestrians. The Owner acknowledges that any damage to the structure due to snow clearing operations is the responsibility of the Owner, unless caused by gross negligence of the Municipality.

3.0 Removal

The accessible ramp must be removed if requested by the Municipality, at the expense of the Owner.

4.0 Permits

- (a) The Owner agrees to comply with all Municipal by-laws including the Streets and Sidewalks By-law for all maintenance work associated with this encroachment within the right-of-way.
- (b) The Owner shall provide a hard copy record drawing of the structure once it has been completed to the satisfaction of the Building Inspector.

5.0 Indemnity

- (a) The Owner shall provide proof of liability insurance for the Property to the Engineer to a minimum of \$2,000,000.00 prior to installing the accessible ramp.
- (b) The Owner agrees to indemnify and save the Municipality harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the license set forth in this Agreement or from the existence of the accessible ramp however caused, except to the extent that the loss arises out of the gross negligence of the Municipality.

6.0 Fees

The Owner agrees to pay the fees set out in the Streets and Sidewalks By-law, such fee being \$50.00 which is to be paid at the time of signing this Agreement.

7.0 Occupational Health and Safety Act

The Owner agrees to comply with the requirements of the Occupational Health and Safety Act and all regulations enacted pursuant thereto in connection with work on Municipal property by the Owner or its contractors or agents.

8.0 Termination

Either party may terminate this agreement at any time. Upon termination of the Agreement, the Owner shall remove the accessible ramp and restore the right-of-way to its original condition.

9.0 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to Scott and Timothy Shearer at 14 Water Street, Windsor, NS, B0N 2T0, or at any other address provided in writing or email by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided in writing or email by the Municipality to the Owner.

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

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Per: _____

) Mark Phillips, Chief Administrative Officer

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) Per: _____

) Deanna Snair, Municipal Clerk

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) **LILAC HOLDINGS INC.**

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Per: _____

) Timothy Shearer, Director



Attachment B

WEST HANTS REGIONAL MUNICIPALITY REPORT

Information ☐	Recommendation ☒	Decision Request ☐	Councillor Activity ☐
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To: Mayor Zebian and Members of West Hants Regional Municipal Council

Submitted by: _____
Sara Poirier, Director of Planning and Development

Todd Richard, Director of Public Works

Date: 2024-09-10

Subject: Encroachment Agreement: 98 Gerrish Street (PID 45057502), Windsor

LEGISLATIVE AUTHORITY

Town of Windsor By-law #10, Streets and Sidewalks By-law

RECOMMENDATION

Staff recommend that Committee of the Whole forward a positive recommendation by passing the following motion:

...that Committee of the Whole recommends that Council enter into an encroachment agreement with the property owner at 98 Gerrish Street (PID 45057502) in Windsor to allow the installation of an accessible ramp on the Municipal sidewalk, in a manner substantively the same as the draft set out in Attachment A to the report entitled Encroachment Agreement dated September 10, 2024.

BACKGROUND

Property ☒	Public Opinion ☐	Environment ☐	Social ☐	Economic ☐	Councillor Activity ☐
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An application was received on August 8, 2024, from Jeff Walker requesting permission to allow the installation of an accessible ramp to encroach on the Municipal sidewalk to provide an accessible entrance to a new business on Gerrish Street. 98 Gerrish Street is owned by Lilac Holdings Inc.; Scott and Timothy Shearer are the Directors of the company. Tim Shearer provided authorization for Jeff Walker to apply on their behalf.

DISCUSSION

The property owners of 98 Gerrish Street in Windsor are requesting permission to allow the installation of an accessible ramp to encroach on the Municipal sidewalk to provide an accessible entrance to a new business on Gerrish Street. The owners have applied for a building permit for the proposed ramp.

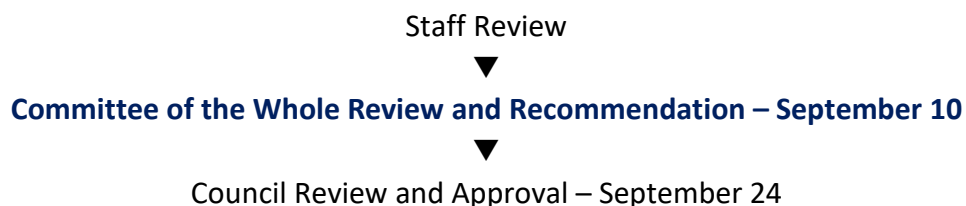
The former Town of Windsor, Streets and Sidewalks By-law, applies to streets, sidewalks and other property owned by the Municipality within the former Town. Section 10.24 of the By-law states *“Notwithstanding sections 10.21 to 10.23, Council may by Agreement, authorize an encroachment or the continuation of an encroachment upon, under or over a street for such period of time and upon such conditions as it deems appropriate.”*

Staff have reviewed the application for the accessible ramp and conclude that it will not significantly impeded pedestrian traffic on the sidewalk, pose a traffic hazard in regard to sight lines, or pose a hazard in relation to proximity to crosswalks, fire hydrants or any other Municipal infrastructure. The application meets all requirements to authorize the execution of the encroachment agreement with the property owner at 98 Gerrish Street (Attachment A).

This draft agreement has yet to be reviewed by the Municipal Solicitor.

NEXT STEPS

The following process is being used for approval of the proposed encroachment agreement.



FINANCIAL IMPLICATIONS

There are no financial implications in relation to the filing of this report. The Streets and Sidewalks By-law requires an application fee of \$50 for an encroachment.

ALTERNATIVES

In response to the application, Committee of the Whole may recommend that Council:

- approve the encroachment agreement as drafted or as specifically revised by the direction of the Committee;
- refuse the encroachment agreement as drafted, citing the specific section of the Streets and Sidewalks By-law that the Committee considers not to be met; or
- provide alternative direction, such as requesting further information on a specific topic.

ATTACHMENTS

Attachment A Draft Encroachment Agreement

CHIEF ADMINISTRATIVE OFFICER REVIEW

I support the recommendation.

Report Prepared by: _____
Sara Poirier, Director of Planning and Development

Todd Richard, Director of Public Works

Report Approved by:  _____
Mark Phillips, Chief Administrative Officer

Attachment A



ENCROACHMENT AGREEMENT

THIS AGREEMENT made this day of , 2024.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

LILAC HOLDINGS INC., a body corporate, with a head office at 14 Water Street, in Hants County, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered Owner of the parcel of land located at 98 Gerrish Street in Windsor (PID 45057502), hereinafter referred to as the “Property”; and

WHEREAS the Owner has requested that the Municipality enter into an encroachment agreement to permit an accessible ramp for the Property to be constructed within the public right-of-way; and

WHEREAS the Council of the Municipality, at a meeting held on **Month Day**, 2024, authorized this encroachment for the Property in accordance with the terms and conditions set out in the Town of Windsor Streets and Sidewalks By-law and as contained in this Agreement.

1.0 Definitions

In this Agreement, unless the context otherwise requires:

- (a) “Engineer” means the Engineer as defined by the Municipal Government Act.

2.0 License

Subject to the terms of this Agreement, the Municipality hereby grants the Owner the non-exclusive right for the placement and maintenance of an accessible ramp at the Property on the paved right-of-way fronting 98 Gerrish Street in accordance with guidelines and requirements of the Municipal Building Inspector. The accessible ramp is to project no more than four (4) feet from the face of the building. In addition to construction specifications required by the Municipal Building Inspector under the Building Code, the Owner agrees that the structure will be constructed in a manner that acknowledges and addresses the snow loads and stress that the structure will be subjected to as a result of the Municipality’s snow plowing and other sidewalk maintenance operations. The Owner acknowledges that the structure will, to some degree, impair the ability of the Municipality to clear and store snow from the sidewalk in this area and agrees to assure that snow and ice are removed from the sidewalk area adjacent to this structure in order to provide a safe walking area for pedestrians.

3.0 Removal

The accessible ramp must be removed if requested by the Municipality, at the expense of the Owner.

4.0 Permits

- (a) The Owner agrees to comply with all Municipal by-laws including the Streets and Sidewalks By-law for all maintenance work associated with this encroachment within the right-of-way.
- (b) The Owner shall provide a hard copy record drawing of the structure once it has been completed to the satisfaction of the Building Inspector.

5.0 Indemnity

The Owner agrees to indemnify and save the Municipality harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of rights set forth in this Agreement or from the existence of the accessible ramp however

caused, except to the extent that the loss arises out of the gross negligence of the Municipality.

6.0 Fees

The Owner agrees to pay the fees set out in the Streets and Sidewalks By-law, such fee being \$50.00 which is to be paid at the time of signing this Agreement.

7.0 Occupational Health and Safety Act

The Owner agrees to comply with the requirements of the Occupational Health and Safety Act and all regulations enacted pursuant thereto in connection with work on Municipal property by the Owner or its contractors or agents.

8.0 Termination

Either party may terminate this agreement at any time. Upon termination of the Agreement, the Owner shall remove the accessible ramp and restore the right-of-way to its original condition.

9.0 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to Scott and Timothy Shearer at 14 Water Street, Windsor, NS, B0N 2T0, or at any other address provided in writing or email by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided in writing or email by the Municipality to the Owner.

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

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Per: _____

) Mark Phillips, Chief Administrative Officer

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) Per: _____

) Deanna Snair, Municipal Clerk

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) **LILAC HOLDINGS INC.**

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Per: _____

) Timothy Shearer, Director



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information ☐	Recommendation ☒	Decision Request ☐	Councillor Activity ☐
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To: Mayor Zebian and Members of West Hants Regional Municipal Council

Submitted by: _____
Sara Poirier, Director of Planning and Development

Todd Richard, Director of Public Works

Date: 2024-09-10

Subject: Encroachment Agreement: 98 Gerrish Street (PID 45057502), Windsor

LEGISLATIVE AUTHORITY

Town of Windsor By-law #10, Streets and Sidewalks By-law

RECOMMENDATION

Staff recommend that Committee of the Whole forward a positive recommendation by passing the following motion:

...that Committee of the Whole recommends that Council enter into an encroachment agreement with the property owner at 98 Gerrish Street (PID 45057502) in Windsor to allow the installation of an accessible ramp on the Municipal sidewalk, in a manner substantively the same as the draft set out in Attachment A to the report entitled Encroachment Agreement dated September 10, 2024.

BACKGROUND

Property ☒	Public Opinion ☐	Environment ☐	Social ☐	Economic ☐	Councillor Activity ☐
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An application was received on August 8, 2024, from Jeff Walker requesting permission to allow the installation of an accessible ramp to encroach on the Municipal sidewalk to provide an accessible entrance to a new business on Gerrish Street. 98 Gerrish Street is owned by Lilac Holdings Inc.; Scott and Timothy Shearer are the Directors of the company. Tim Shearer provided authorization for Jeff Walker to apply on their behalf.

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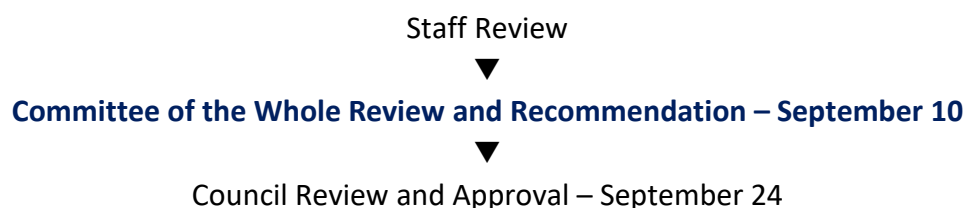
The former Town of Windsor, Streets and Sidewalks By-law, applies to streets, sidewalks and other property owned by the Municipality within the former Town. Section 10.24 of the By-law states *“Notwithstanding sections 10.21 to 10.23, Council may by Agreement, authorize an encroachment or the continuation of an encroachment upon, under or over a street for such period of time and upon such conditions as it deems appropriate.”*

Staff have reviewed the application for the accessible ramp and conclude that it will not significantly impeded pedestrian traffic on the sidewalk, pose a traffic hazard in regard to sight lines, or pose a hazard in relation to proximity to crosswalks, fire hydrants or any other Municipal infrastructure. The application meets all requirements to authorize the execution of the encroachment agreement with the property owner at 98 Gerrish Street (Attachment A).

This draft agreement has yet to be reviewed by the Municipal Solicitor.

NEXT STEPS

The following process is being used for approval of the proposed encroachment agreement.



FINANCIAL IMPLICATIONS

There are no financial implications in relation to the filing of this report. The Streets and Sidewalks By-law requires an application fee of \$50 for an encroachment.

ALTERNATIVES

In response to the application, Committee of the Whole may recommend that Council:

- approve the encroachment agreement as drafted or as specifically revised by the direction of the Committee;
- refuse the encroachment agreement as drafted, citing the specific section of the Streets and Sidewalks By-law that the Committee considers not to be met; or
- provide alternative direction, such as requesting further information on a specific topic.

ATTACHMENTS

Attachment A Draft Encroachment Agreement

CHIEF ADMINISTRATIVE OFFICER REVIEW

I support the recommendation.

Report Prepared by: _____
Sara Poirier, Director of Planning and Development

Todd Richard, Director of Public Works

Report Approved by:  _____
Mark Phillips, Chief Administrative Officer

Attachment A



ENCROACHMENT AGREEMENT

THIS AGREEMENT made this day of , 2024.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

LILAC HOLDINGS INC., a body corporate, with a head office at 14 Water Street, in Hants County, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered Owner of the parcel of land located at 98 Gerrish Street in Windsor (PID 45057502), hereinafter referred to as the “Property”; and

WHEREAS the Owner has requested that the Municipality enter into an encroachment agreement to permit an accessible ramp for the Property to be constructed within the public right-of-way; and

WHEREAS the Council of the Municipality, at a meeting held on **Month Day**, 2024, authorized this encroachment for the Property in accordance with the terms and conditions set out in the Town of Windsor Streets and Sidewalks By-law and as contained in this Agreement.

1.0 Definitions

In this Agreement, unless the context otherwise requires:

- (a) “Engineer” means the Engineer as defined by the Municipal Government Act.

2.0 License

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3.0 Removal

The accessible ramp must be removed if requested by the Municipality, at the expense of the Owner.

4.0 Permits

- (a) The Owner agrees to comply with all Municipal by-laws including the Streets and Sidewalks By-law for all maintenance work associated with this encroachment within the right-of-way.
- (b) The Owner shall provide a hard copy record drawing of the structure once it has been completed to the satisfaction of the Building Inspector.

5.0 Indemnity

The Owner agrees to indemnify and save the Municipality harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of rights set forth in this Agreement or from the existence of the accessible ramp however

caused, except to the extent that the loss arises out of the gross negligence of the Municipality.

6.0 Fees

The Owner agrees to pay the fees set out in the Streets and Sidewalks By-law, such fee being \$50.00 which is to be paid at the time of signing this Agreement.

7.0 Occupational Health and Safety Act

The Owner agrees to comply with the requirements of the Occupational Health and Safety Act and all regulations enacted pursuant thereto in connection with work on Municipal property by the Owner or its contractors or agents.

8.0 Termination

Either party may terminate this agreement at any time. Upon termination of the Agreement, the Owner shall remove the accessible ramp and restore the right-of-way to its original condition.

9.0 Written Notice

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This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

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Per: _____

) Mark Phillips, Chief Administrative Officer

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) Per: _____

) Deanna Snair, Municipal Clerk

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) **LILAC HOLDINGS INC.**

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Per: _____

) Timothy Shearer, Director