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Item No. 13.2
Halifax and West Community Council
September 12, 2017

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: ORIGINAL SIGNED

Kelly Denty, Acting Director, Planning and Development

DATE: July 24, 2017

SUBJECT: **Case 21191: Non-substantive amendment to an existing development agreement) for 1749-59 Vernon Street, Halifax.**

ORIGIN

Application by John Sipos and Melissa Sanford

LEGISLATIVE AUTHORITY

See Attachment A

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Approve, by resolution, the proposed amending agreement, which shall be substantially of the same form as set out in Attachment B of this report, to allow for a time extension to commence the development at 1749-59 Vernon Street, Halifax; and
2. Require the agreement be signed by the property owners within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

John Sipos and Melissa Sanford are applying for non-substantive amendments to an existing development agreement to allow for a time extension to the construction commencement and completion dates for the development at 1749-59 Vernon Street.

Subject Site	1749, 1751, 1753, 1755, 1757, and 1759 Vernon Street
Location	East side of Vernon Street between Cedar Street and Jubilee Road
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	Medium Density Residential under the Peninsula Centre Secondary Planning Strategy (PCSPS) of the Halifax Municipal Planning Strategy (MPS)
Zoning (Map 2)	R-2 General Residential Zone under the Halifax Peninsula Land Use By-law (LUB)
Size of Site	Approximately 780.7 square metres (8,404 square feet)
Street Frontage	Approximately 29.9 metres (98 feet)
Current Land Use(s)	A six unit building
Surrounding Use(s)	Within a low-rise residential neighborhood

Proposal Details

The applicant wishes to amend the existing development agreement to allow for a time extension to the construction commencement and completion dates for the project. On September 10, 2012, the former Peninsula Community Council approved a development agreement to allow for an increase to the volume of a structure containing a non-conforming six (6) unit apartment house at 1749, 1751, 1753, 1755, 1757, and 1759 Vernon Street, Halifax.

The agreement allows for a third storey to be added with no increase to the number of permitted units. Section 7.3 of the agreement stipulates that the development must commence within three (3) years from the date of registration, establishing a commencement date of Feb 13, 2016 and a completion date of February 13, 2018. In September 2015, Halifax and West Community Council approved a time extension to the construction commencement and completion dates which resulted in an amended commencement date of July 13, 2017 and an amended completion date of July 13, 2019.

The applicant has not been able to proceed with the project due to unexpected personal matters, and has requested a further amendment to the commencement and completion dates. The request is to extend the commencement and completion dates by two (2) years resulting in a commencement date of two (2) years from the future date of registration of this proposed Second Amending Agreement.

Enabling Policy and LUB Context

Implementation Policy 3.14 of the MPS allows for the structure in which a non-conforming use is located to be altered or expanded by development agreement. This is the policy framework under which the agreement was considered and approved, and which applies to the request for an amendment to the existing agreement.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through providing information through the HRM website and signage posted on the subject site. A public information meeting and public hearing are not required for a non-substantive amendment to a development agreement. The decision on the amendments is made by resolution of Council.

The proposal will potentially impact local residents and property owners.

DISCUSSION

As with the previous time extension, the changes relate only to the construction commencement and completion dates and the development itself will be unchanged. Therefore, it is recommended that the dates for construction commencement and completion be extended as outlined in the proposed amending development agreement (Attachment B). Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is consistent with the intent of the MPS. Therefore, staff recommend that the Halifax and West Community Council approve the proposed development agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed amending agreement. The administration of the proposed amending agreement can be carried out within the approved C310 Urban and Rural Planning Applications 2017-18 budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amending agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

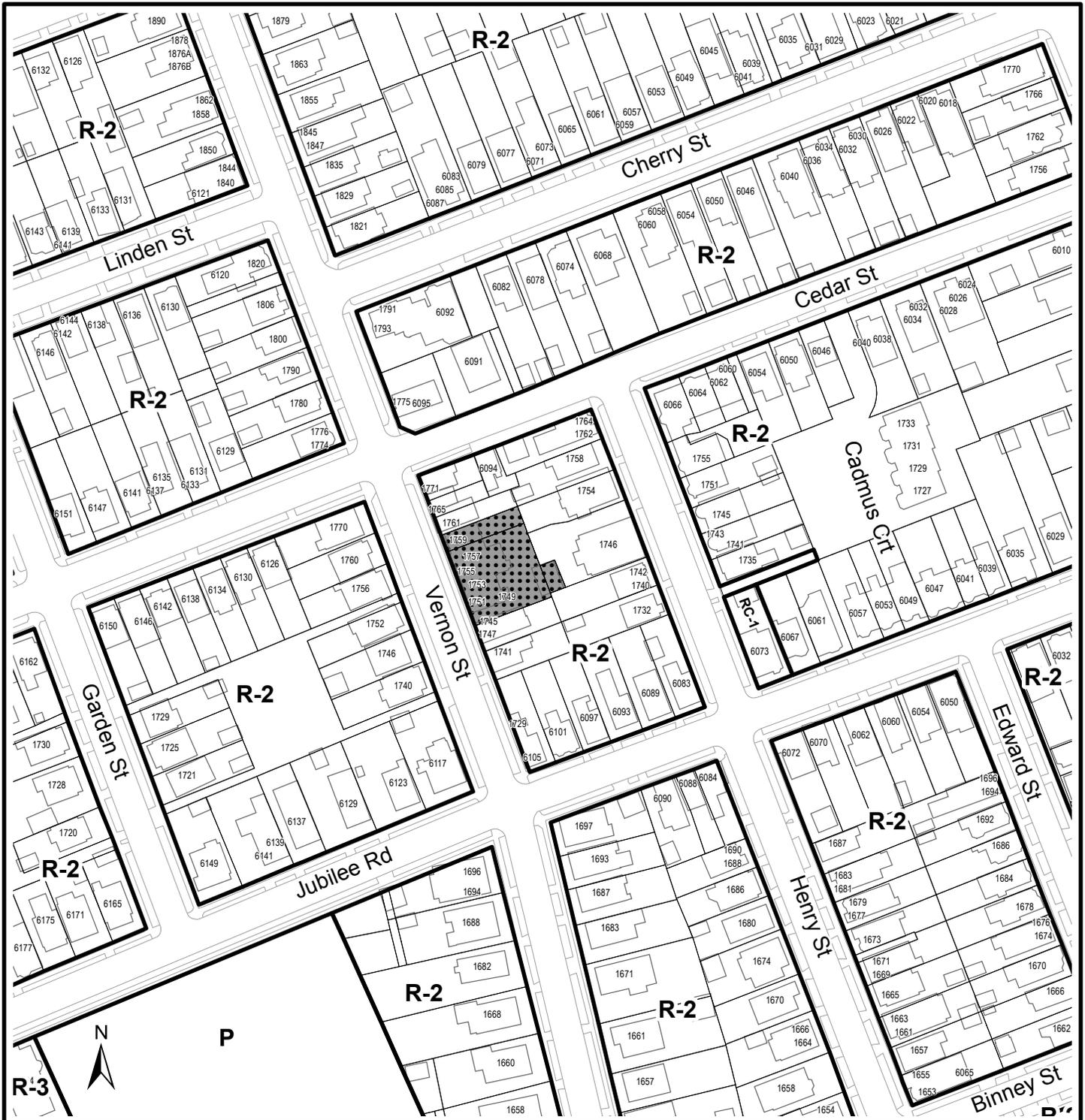
No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed amending agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed amending agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Map 1:	Generalized Future Land Use
Map 2:	Zoning Map
Attachment A:	Legislative Authority
Attachment B:	Proposed Amending Development Agreement



Map 1 - Zoning and Location

1751-1759 Vernon Street
Halifax

HALIFAX

 Subject Properties

Zone

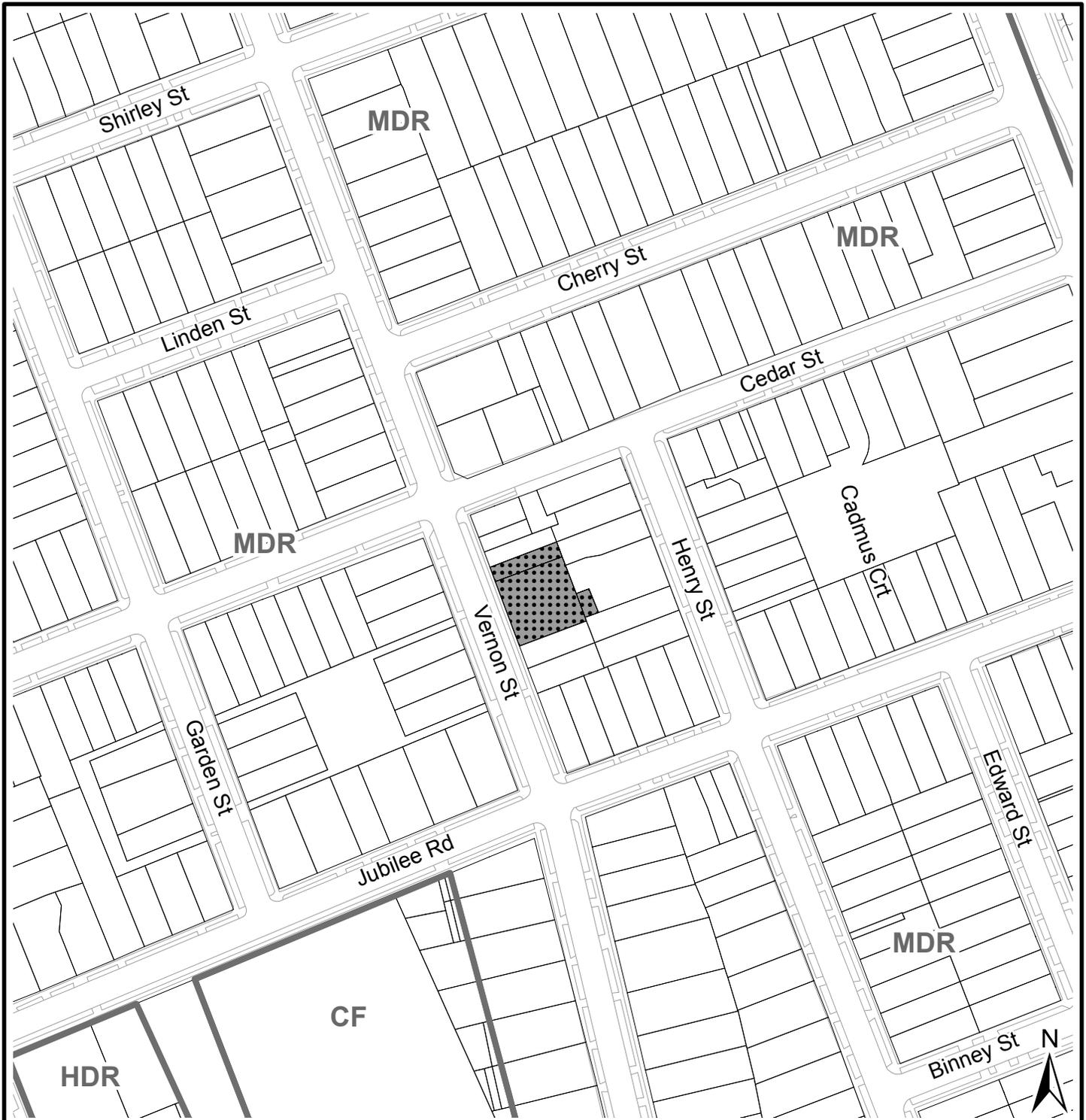
- R-2 General Residential
- R-3 Multiple Dwelling
- RC-1 Neighbourhood Commercial
- C-2 General Business
- P Park and Institutional



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

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

Halifax Peninsula
Land Use By-Law Area

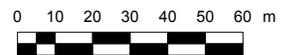


Map 2 - Generalized Future Land Use

1751-1759 Vernon Street
Halifax

HALIFAX

 Subject Properties



Halifax Plan Area
Peninsula Centre Detailed Area Plan

Designation

- MDR Medium Density Residential
- HDR High Density Residential
- CF Community Facility

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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

Attachment A – Legislative Authority

Development Agreements By Community Council

The *Community Council Administrative Order*, subsection 3 (1) “Subject to subsection (3) of this section, sections 29, 30 and 31 of the *Halifax Regional Municipality Charter* apply to each Community Council.”

Halifax Regional Municipality Charter:

Development agreements by community councils

- 31** (1) This Section applies to a community council if the Council so provides in the policy establishing the community council.
- (2) Where a municipal planning strategy of the Municipality provides for development by agreement, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.
- (3) A development agreement, or amendment to a development agreement, entered into by a community council must be signed by the Mayor and the Clerk on behalf of the Municipality.
- (4) Where a development agreement entered into by a community council purports to commit the Municipality to an expenditure, the commitment has no force or effect until approved by the Council. 2008, c. 39, s. 31.

HRM Charter, Part VIII, Planning and Development, including:

Development agreements

- 240** (1) The Council may consider development by development agreement where a municipal planning strategy identifies
- (a) the developments that are subject to a development agreement;
 - (b) the area or areas where the developments may be located; and
 - (c) the matters that the Council must consider prior to the approval of a development agreement.
- (2) The land-use by-law must identify the developments to be considered by development agreement. 2008, c. 39, s. 240.

Content of development agreements

- 242** (1) A development agreement may contain terms with respect to
- (a) matters that a land-use by-law may contain;
 - (b) hours of operation;
 - (c) maintenance of the development;
 - (d) easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;
 - (e) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;
 - (f) the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;
 - (g) the subdivision of land;
 - (h) security or performance bonding.
- (2) A development agreement may include plans or maps.
- (3) A development agreement may

- (a) identify matters that are not substantive or, alternatively, identify matters that are substantive;
- (b) identify whether the variance provisions are to apply to the development agreement;
- (c) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;
- (d) provide that upon the completion of the development or phases of the development, the development agreement, or portions of it, may be discharged by the Council;
- (e) provide that, where the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by the Council without the concurrence of the property owner. 2008, c. 39, s. 242.

Requirements for effective development agreement

- 243**
- (1) A development agreement must not be entered into until
 - (a) the appeal period has elapsed and no appeal has been commenced; or
 - (b) all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board.
 - (2) The Council may stipulate that a development agreement must be signed by the property owner within a specified period of time.
 - (3) A development agreement does not come into effect until
 - (a) the appeal period has elapsed and no appeal has been commenced or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board;
 - (b) the development agreement is signed by the property owner, within the specified period of time, if any, and the Municipality; and
 - (c) the development agreement is filed by the Municipality in the registry.
 - (4) The Clerk shall file every development agreement, amendment to a development agreement and discharge of a development agreement in the registry. 2008, c. 39, s. 243.

Attachment B
Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this day of **[Insert Month]**, 20___,

BETWEEN:

[Insert Individual's name]

an individual, in the Halifax Regional Municipality in the Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 1749, 1751, 1753, 1755, 1757, and 1759 Vernon Street, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the former Peninsula Community Council of the Halifax Regional Municipality approved an application to enter into a Development Agreement to allow for an increase in the volume of a structure containing a non-conforming six (6) unit apartment house on September 10, 2012 (Municipal Case 17371), which said Development Agreement was registered at the Land Registration Office as Document Number 102476869 (hereinafter called the "Original Agreement");

AND WHEREAS the Halifax and West Community Council of the Halifax Regional Municipality approved an application to amend the Original Agreement to allow for an 18 month extension to the dates of construction commencement and completion of development on September 15, 2015 (Municipal Case 19809), which said Amending Agreement was registered at the Land Registration Office as Document Number 108323743 (hereinafter called the "First Amending Agreement");

AND WHEREAS the Original Agreement and the First Amending Agreement together comprise the Existing Agreement (hereinafter called "the Existing Agreement");

AND WHEREAS the Developer wishes to amend the Existing Agreement to allow for a two (2) year extension to the dates of construction commencement and completion of development pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 6 of the Existing Agreement;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number **21191**;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

The Existing Agreement shall be amended as follows:

1. Subsection 7.3.1 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:

Attachment B Proposed Amending Development Agreement

- 7.3.1 In the event that development on the Lands has not commenced ~~by July 13, 2017~~ **within two (2) years from the date of registration of this Second Amending Agreement at the Land Registration Office**, the 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.
2. Subsection 7.4.3 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:
- 7.4.3 If the Developer fails to complete the development ~~by July 13, 2019~~ **within four (4) years from the date of registration of this Second Amending Agreement at the Land Registration Office**, 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; or
 - (c) discharge this agreement.

Attachment B
Proposed Amending Development Agreement

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

Witness

Per: _____

MAYOR

Witness

Per: _____

MUNICIPAL CLERK

Attachment B
Proposed Amending Development Agreement

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Cathy Mellett, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia