



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 13.1.3
Harbour East – Marine Drive Community Council
February 2, 2017

TO: Chair and Members of Harbour East – Marine Drive Community Council

ORIGINAL SIGNED

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: January 9, 2017

SUBJECT: Case 20787: Discharge Agreement for 385 Caldwell Road, Cole Harbour

ORIGIN

Application by Gladys Simmons to discharge the existing development agreement applicable to 385 Caldwell Road, Cole Harbour.

LEGISLATIVE AUTHORITY

Refer to Attachment C.

RECOMMENDATION

It is recommended that Harbour East – Marine Drive Community Council:

1. Approve, by resolution, the proposed Discharge Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharge Agreement be signed by the property owner 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

Gladys Simmons is applying to discharge the existing development agreement applicable to 385 Caldwell Road, Cole Harbour.

Location	385 Caldwell Road, Cole Harbour (PID 40714800)
Regional Plan Designation	Urban Settlement (US)
Community Plan Area	Cole Harbour /Westphal Plan Area
Community Plan Designation (Map 1)	Urban Residential (UR) under the Cole Harbour / Westphal Municipal Planning Strategy (Map 1)
Zoning (Map 2)	Community Facility (P-2) Zone under the Cole Harbour / Westphal Land Use By-law (Map 2)
Size of Site	2,794 square metres (30,073 square feet)
Street Frontage	Approximately 46 metres (151 feet) on Caldwell Road
Current Land Use(s)	A one storey building previously used as a church with a residential apartment unit (the apartment unit is permitted by the existing agreement).
Surrounding Use(s)	<ul style="list-style-type: none">• An area predominantly comprised of R-1 zoned single unit dwellings• To the north on Caldwell Road is a Tim Horton's restaurant and two convenience stores under the C-1 Zone

Proposal Details

The applicant has requested to discharge the existing development agreement which was approved by Harbour East Marine Drive Community Council on March 7, 2013 (Planning Case 17673 – Attachment D). The development agreement permits the establishment of a health products store on the property, and within a single residential apartment unit. The owner did not establish the health products store, and the approved agreement expired two years after the date of registration on May 13, 2015. The applicant no longer intends to establish a health products store on the site, and is therefore requesting that Community Council consider discharging the agreement.

Discharge of Development Agreements

The *Halifax Regional Municipality Charter* provides Council with a mechanism to discharge development agreements. Part VIII, Clause 244, identifies that Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner(s). The Charter does not require a public hearing for the discharge of an agreement or a portion thereof. A development agreement can be discharged by resolution of Community Council as per section 31 of the *Halifax Regional Municipality Charter*.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. A public information meeting or a public hearing is not required, nor is it the practice to hold such meetings for the discharge of a development agreement. The decision to discharge a development agreement is made by resolution of Community Council.

The proposed discharge will have no impact on local residents, property owners or other stakeholders as the existing underlying zoning will apply to the existing building and land.

DISCUSSION

The development agreement required that the development commence within six months from the registration of the agreement at the Registry of Deeds, or the agreement 'shall have no further force or effect'. Section 6.5 of the agreement also provides provisions for discharging the agreement:

6.5.1 If the Developer fails to complete the development after 2 years from the date of registration of this Agreement at the Registry of Deeds or 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."*

As the agreement no longer has effect a discharge of the agreement will allow the property to be fully regulated under the underlying P-2 zoning of the Cole Harbour/Westphal Land Use By-law (Attachment B).

Non-Conforming Residential Use

The P-2 Zone only permits a single residential unit in conjunction with a denominational use or a daycare. The apartment use was originally permitted in 1989 in conjunction with the previous church use, and preceded the effective date of the land use by-law. The development agreement also allowed for the continuation of the residential use, and the discharge of the agreement will cause the residential use to be classified as non-conforming.

Non-conforming uses in the Cole Harbour / Westphal plan area are regulated according to Section 4.9, and Appendix A, of the Land Use By-law. Under these requirements, the non-conforming use may continue, however it could not be expanded or discontinued for more than six months.

Conclusion

The proposed discharge would enable the subject property to be developed in accordance with the provisions of the existing underlying P-2 Zone. Therefore, staff recommends that Community Council discharge the existing development agreement through the Discharging Agreement contained in Attachment A.

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 development agreement. The administration of the proposed development agreement can be carried out within the approved 2016/2017 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 discharging development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Harbour East – Marine Drive Community Council may choose to refuse to discharge the existing development agreement and therefore, development on the property would remain subject to the conditions of the development agreement. A decision of Council to refuse to discharge a development 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 and Location
Attachment A:	Discharging Agreement
Attachment B:	P-2 Zone Requirements
Attachment C:	Legislative Authority
Attachment D:	Development Agreement - Case 17673

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Maggie Holm, Principal Planner, 902.293.9496

Report Approved by: ORIGINAL SIGNED

Kelly Denty, Manager, Current Planning, 902.490.4800



Map 1 - Generalized Future Land Use

385 Caldwell Road,
Cole Harbour

HALIFAX

 Area of Existing Development Agreement to be Discharged

Designation

Cole Harbour/
Westphal UR Urban Residential



Cole Harbour/Westphal
& Dartmouth Plan Area

Dartmouth R Residential

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

The accuracy of any representation on this plan is not guaranteed.



Map 2 - Zoning and Location

385 Caldwell Road,
Cole Harbour

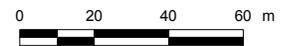
HALIFAX

 Area of Existing
Development Agreement
to be Discharged

Cole Harbour/
Westphal

Zone

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-3 Mobile Dwelling
- R-7 Rural Estate
- C-1 Neighbourhood Business
- P-2 Community Facility



Cole Harbour/Westphal
& Dartmouth Plan Area

Dartmouth

- CDD Comprehensive Development District

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

The accuracy of any representation on
this plan is not guaranteed.

**ATTACHMENT A
DISCHARGING AGREEMENT**

THIS DISCHARGING 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 Developers are the registered owners of certain lands located at 385 Caldwell Road, Cole Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on March 7, 2013 the Harbour East – Marine Drive Community Council approved an application to enter into a development agreement to allow for a health products store on the Lands pursuant to Policies UR-18 and IM-11 of the Cole Harbour / Westphal Municipal Planning Strategy and referenced as Municipal Case Number 17673, and which said development agreement was registered on May 13, 2013 at the Registry of Deeds in Halifax as Document Number 102996478 (hereinafter called the "Existing Agreement");

AND WHEREAS two years after the date of registration on May 13, 2015, an Occupancy Permit had not been issued to the Developer for the proposed health products store use as per Sections 6.4 and 6.5 of the Existing Agreement;

AND WHEREAS the Developer has requested that the Existing Agreement be discharged from the Lands;

AND WHEREAS, pursuant to the procedures and requirements contained in the *Halifax Regional Municipality Charter*, the Harbour East – Marine Drive Community Council of the Municipality approved this request by resolution at a meeting held on **[INSERT DATE]** referenced as Municipal Case Number 20787;

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

1. The Existing Agreement is hereby discharged as it applies to the Lands and shall no longer have any force or effect.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Cole Harbour / Westphal Land Use By-law, as amended from time to time.

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: _____

INSERT REGISTERED OWNER NAME

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

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

Attachment B
P-2 Zone Requirements (Cole Harbour / Westphal LUB)

PART 21: P-2 (COMMUNITY FACILITY) ZONE

21.1 P-2 USES PERMITTED

No development permit shall be issued in any P-2 (Community Facility) Zone except for the following:

Institutional Uses

Educational institutions and uses;

Denominational institutions and uses;

Day care facilities;

A single dwelling unit in conjunction with a denominational institution or day care facility;

Fire and police stations;

Government offices and public works;

Hospitals and medical clinics;

Public libraries, museums and galleries;

Community centres and halls;

Recreation uses;

Funeral establishments in conjunction with a cemetery (CHWEPCBCC-Aug 19/96;E-Sep 15/96)

Existing residential care facilities (RC-Jul 5/11;E-Oct 8/11)

Open Space Uses

Public and private parks and playgrounds;

Cemeteries;

Historic sites and monuments.

21.2 P-2 ZONE REQUIREMENTS: INSTITUTIONAL USES

In any P-2 Zone, where uses are permitted as Institutional Uses, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	central services - 10,000 square feet (929.0 m2) on-site services - 20,000 square feet (1858.1 m2)
Minimum Frontage:	100 feet (30.5 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear or Side Yard	1/2 the height of the main building
Maximum Lot Coverage	50 percent

21.2A OTHER REQUIREMENTS: FUNERAL ESTABLISHMENTS AND CEMETERIES
(CHWEPCBCC-Aug 19/96;E-Sep 15/96)

Where funeral establishments and cemeteries are permitted in any P-2 Zone, the following shall apply:

- a) **The funeral establishments shall be located on the same lot as a cemetery, and the gross floor area of the building shall not exceed ten (10) percent of the lot area;**
- b) **Vehicle access to any property which is to contain a funeral establishment shall be from a designated collector or arterial street only;**

- c) **Any building used for the purposes of a funeral establishment or cemetery maintenance (including an equipment or storage area) shall be located a minimum of fifty (50) feet from any abutting residentially zoned property;**
- d) **Where a funeral establishment or a parking lot (inclusive of driveways and driving aisles) for a funeral establishment is to be located on a lot which is adjacent to property which is zoned for residential use, a landscaped yard of at least thirty (30) feet in width shall be provided, except where an opaque fence of at least six (6) feet in height is provided along the common property boundary the landscaped yard may be reduced to fifteen (15) feet. For the purposes of this section, landscaping shall consist of either the retention of existing tree cover, or the planting of a mix of nursery-stock trees and shrubs.**

21.3 **P-2 ZONE REQUIREMENTS: OPEN SPACE USES**

In any P-2 Zone, where uses are permitted as Open Space Uses, no development permit shall be issued except in conformity with the provisions of Part 20.

21.4 **EXISTING RESIDENTIAL CARE FACILITIES (RC-Jul 5/11;E-Oct 8/11)**

Additions which create no extra beds shall be permitted for existing residential care facilities located on Circassion Drive and Chameau Crescent, subject to the requirements of the P-2 Zone.

Attachment C – Legislative Authority

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 (“HRM 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.

Attachment C – Legislative Authority

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.

Discharge of development agreement

244 (1) A development agreement is in effect until discharged by the Council.

(2) The Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner.

(3) After a development agreement is discharged, the land is subject to the land-use by-law. 2008, c. 39, s. 244.

Form 24

Purpose: to change the registered interest, benefits or burdens

14
(Instrument code: 450)

(If change(s) requested relate(s) to one or more of the following and no other interests are being added or removed on this form: manner of tenure, description of manner of tenure, non-resident status, parcel access or NSFLB occupant. Note: This form cannot be used to correct an error in a parcel register).

(Instrument code: 451)

(Change to existing servient or dominant tenement PID number in a parcel register as a result of subdivision or consolidation. Note: This form cannot be used to correct an error in a parcel register)

For Office Use

Registration district: Halifax County
 Submitter's user number: 500000751
 Submitter's name: Lester R. Pyne

HALIFAX COUNTY LAND REGISTRATION OFFICE
 I certify that this document was registered or recorded
 as shown here.
 Kim Mackay, Registrar

102994478

LR ROD

MAY 13 2013

11:19 PP

In the matter of Parcel Identification Number (PID)

PID	40714800
PID	

(Expand box for additional PIDs, maximum 9 PIDs per form)

The following additional forms are being submitted simultaneously with this form and relate to the attached document (check appropriate boxes, if applicable):

- Form 24(s)
 Form 8A(s)

Additional information (check appropriate boxes, if applicable):

- This Form 24 creates or is part of a subdivision or consolidation.
 This Form 24 is a municipal or provincial street or road transfer.
 This Form 24 is adding a corresponding benefit or burden as a result of an AFR of another parcel.
 This Form 24 is adding a benefit or burden where the corresponding benefit/burden in the "flip-side" parcel is already identified in the LR parcel register and no further forms are required.

Power of attorney (Note: completion of this section is mandatory)

- The attached document is signed by attorney for a person under a power of attorney, and the power of attorney is:
- recorded in the attorney roll
 - recorded in the parcel register
 - incorporated in the document

OR

- No power of attorney applies to this document

May 4, 2009

This form is submitted to make the changes to the registered interests, or benefits or burdens, and other related information, in the above-noted parcel register(s), as set out below.

The following burdens are to be added and/or removed in the parcel register(s):
 (Note: An amending PDCA is required if the changes being made to the burden section are not currently reflected in the description in the parcel register).

Instrument type	Agreement Re Use of Land (Development Agree)
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g., estate of, executor, trustee, personal representative) (if applicable)</i>	Halifax Regional Municipality - Party to Agreement (Burden)
Mailing address of interest holder to be added (if applicable)	PO Box 1749 Halifax, Nova Scotia B3J 3A5
Reference to related instrument in names-based roll/parcel register (if applicable)	
Reason for removal of interest (for use only when interest is being removed by operation of law) <i>Instrument code: 443</i>	

Certificate of Legal Effect:

I certify that, in my professional opinion, it is appropriate to make the changes to the parcel register(s) as instructed on this form.

Dated at Dartmouth, in the County of Halifax, Province of Nova Scotia, on April 22, 2013

 Signature of authorized lawyer

Name Lester R. Pyne, Barrister and Solicitor
Address 194 Caledonia Road, Dartmouth, NS, B2X 1L4
Phone 902-434-6167
Email: les.pyne@ns.sympatico.ca
Fax: 902-434-5448

- This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

May 4, 2009

THIS AGREEMENT made this 28th day of April, 2013

BETWEEN:

GLADYS ALBERTA SIMMONS

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

Approved as to Form
and Authority

Solicitor

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 385 Caldwell Road and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a health products store on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies UR-18 and IM-11 of the Cole Harbour/Westphal Municipal Planning Strategy;

AND WHEREAS the Harbour East and Marine Drive Community Council for the Municipality approved this request at a meeting held on March 7, 2013, referenced as Municipal Case Number 17673;

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 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Cole Harbour/Westphal Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, 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 to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 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 to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer 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 laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

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: DEFINITIONS

2.1 Words Not Defined under this Agreement

2.1.1 All words unless otherwise specifically defined herein shall be as defined in the Cole Harbour/Westphal Land Use By-law and Regional Subdivision By-law, if not defined in these documents their customary meaning shall apply.

2.1.2 For the purposes of this Agreement, "health products store" is defined as follows:

Health products store means a retail store where products related to personal health, including but not limited to items such as vitamins and other nutritional and dietary supplements, personal care products, and published materials related to personal health and well-being are offered for sale directly to the public at retail value. A health products store may also include an area, not exceeding 25% of the gross floor area, which is devoted to health food items.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 17673:

Schedule A Legal Description of the Lands
Schedule B Site Plan
Schedule C Floor Plan

3.2 General Description of Land Use

3.2.1 The use(s) of the Lands permitted by this Agreement are as follows:

- (a) A Health Products Store not exceeding 1,200 square feet in gross floor area, in the area marked "Store" as shown on Schedule C, with up to an additional 500 square feet of space for accessory office and storage use as shown on Schedule C;
- (b) A single residential apartment unit; and
- (c) As an alternative to the Health Products Store, uses permitted by the P-2 (Community Facility) Zone excepting day cares and medical clinics.

- 3.2.2 The hours of operation for the health products store use are limited to 9 am to 9 pm Monday to Friday, 9 am to 6 pm Saturdays, and 12 noon to 5 pm on Sundays.
- 3.2.3 No commercial use may take place outside of the building on the Lands, and no outdoor storage or display shall be permitted.
- 3.2.4 The Development Officer may approve unenclosed structures attached to a main building such as verandas, decks and porches and steps, barrier free ramps, to be located within the minimum front, side and rear yards provided the provisions of the Cole Harbour/Westphal Land Use By-law as amended from time to time for such structures are adhered to.

3.3 Requirements Prior to Approval

- 3.3.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless all necessary approvals have been issued by the Municipality.

3.4 Siting and Architectural Requirements

- 3.4.1 No additions may be made to either enlarge or alter the existing footprint of the building as shown on Schedule B.

3.5 Parking, Circulation and Access

- 3.5.1 Access to the Lands shall be directly from the Caldwell Road driveway, as shown on Schedule B as "Entry".
- 3.5.2 Vehicular access to the Lands from the shared lane, as shown on Schedule B, shall be blocked by physical means such as a curb, fence, landscaping or a combination thereof, as may be determined by the Development Officer. Should a public street be constructed to replace the shared laneway, driveway access will be permitted pursuant to the requirements of By-law S-300, as amended from time to time.
- 3.5.3 The Developer shall maintain the parking lot areas as shown on Schedule B in good order. No expansion to the parking areas is permitted. Any change in use of the Lands from a health products store will require the parking lot areas to be paved with asphalt, edged with curbing, and parking spaces demarcated in accordance with the Land Use By-law.

3.6 Outdoor Lighting

The Developer agrees that all exterior lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.7 Landscaping

All grassed areas shown as "Sod" on Schedule B shall be maintained as landscaped areas. An additional landscaped area measuring a minimum of 4 feet (1.2 m) in width shall be provided between the parking lot and the sidewalk as shown on Schedule B. In addition to grass, this landscaped area shall include a minimum of two trees and may also include other plant material, planting beds or decorative elements deemed acceptable by the Development Officer. Ornamental plants shall also be provided in association with a sign provided under Section 3.9.2.

3.8 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

3.9 Signs

3.9.1 One fascia sign not exceeding 24 square feet (2.2 square metres) shall be permitted. No ground signs are permitted.

3.9.2 A non-illuminated changeable letter planter box sign shall be permitted pursuant to By-law S-800, in the location as shown on Schedule B. Ornamental plants shall be planted and maintained inside the base of the sign as part of the required landscaping.

PART 4: OFF-SITE DISTURBANCE

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) Changes to the hours of operation outlined in Section 3.2.2,
- (b) Conversion of any part of the building to a day care or medical clinic,
- (c) Changes to the signage requirements outlined in Section 3.9,
- (d) The granting of an extension to the date of commencement of development as identified in Section 6.3 of this Agreement; and
- (e) The granting of an extension to the length of time for the completion of the development as identified in Section 6.4 of this Agreement.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within six months from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, 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.

- 6.3.2 For the purpose of this section, commencement of development shall mean application for a Development Permit.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1 if the Municipality receives a written request from the Developer at least thirty (30) calendar days prior to the expiry of the commencement of development time period.

6.4 Completion of Development

- 6.4.1 Upon the completion of the whole development 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; or
 - (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Cole Harbour/Westphal as may be amended from time to time.

- 6.4.2 For the purpose of this section, completion of development shall mean issuance of an Occupancy Permit.

6.5 Discharge of Agreement

- 6.5.1 If the Developer fails to complete the development after 2 years from the date of registration of this Agreement at the Registry of Deeds or 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.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

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 twenty four hours of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) calendar 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 Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands 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; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2013.

SIGNED, SEALED AND DELIVERED in the presence of:

=====

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

GLADYS ALBERTA SIMMONS

Per: _____

Per: _____

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Per: _____

Mike Savage
Mayor
Municipal Clerk

PROVINCE OF NOVA SCOTIA

COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 19th day of April, A.D., 2013, before me, the subscriber personally came and appeared Marie Pyne a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that GLADYS ALBERTA SIMMONS, one of the parties thereto, signed, sealed and delivered the same in his presence.



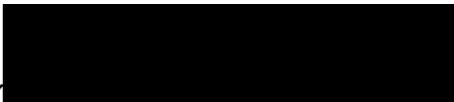
~~A
Commissioner of the Supreme Court
of Nova Scotia~~

LESTER R. PYNE
A Barrister of the
Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA

COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 29th day of April, A.D., 2013, before me, the subscriber personally came and appeared before me LISA MacNeil & LIAM MacSoreen the 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 Mike Savage, its Mayor, and Cathy Mellett, its Municipal Clerk, its duly authorized officers in his presence.



~~A
Commissioner of the Supreme Court
of Nova Scotia~~

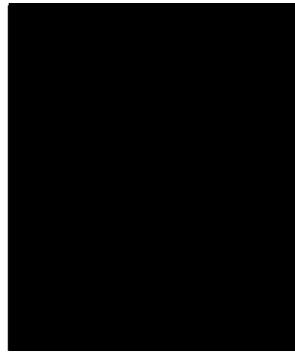
SHERRYLL MURPHY
A Commissioner of the Supreme
Court of Nova Scotia

Schedule A

Municipality/County: Halifax

Designation of Parcel on Plan: Lot K6-AX Registration County: Halifax Registration Reference
of Plan: Plan No. 31207 Drawer 342

The parcel originates with an approved plan of subdivision that has been filed under the Registry Act or registered under the Land Registration Act at the Land Registration Office for the registration district of Halifax as plan number 31207 Drawer 342.





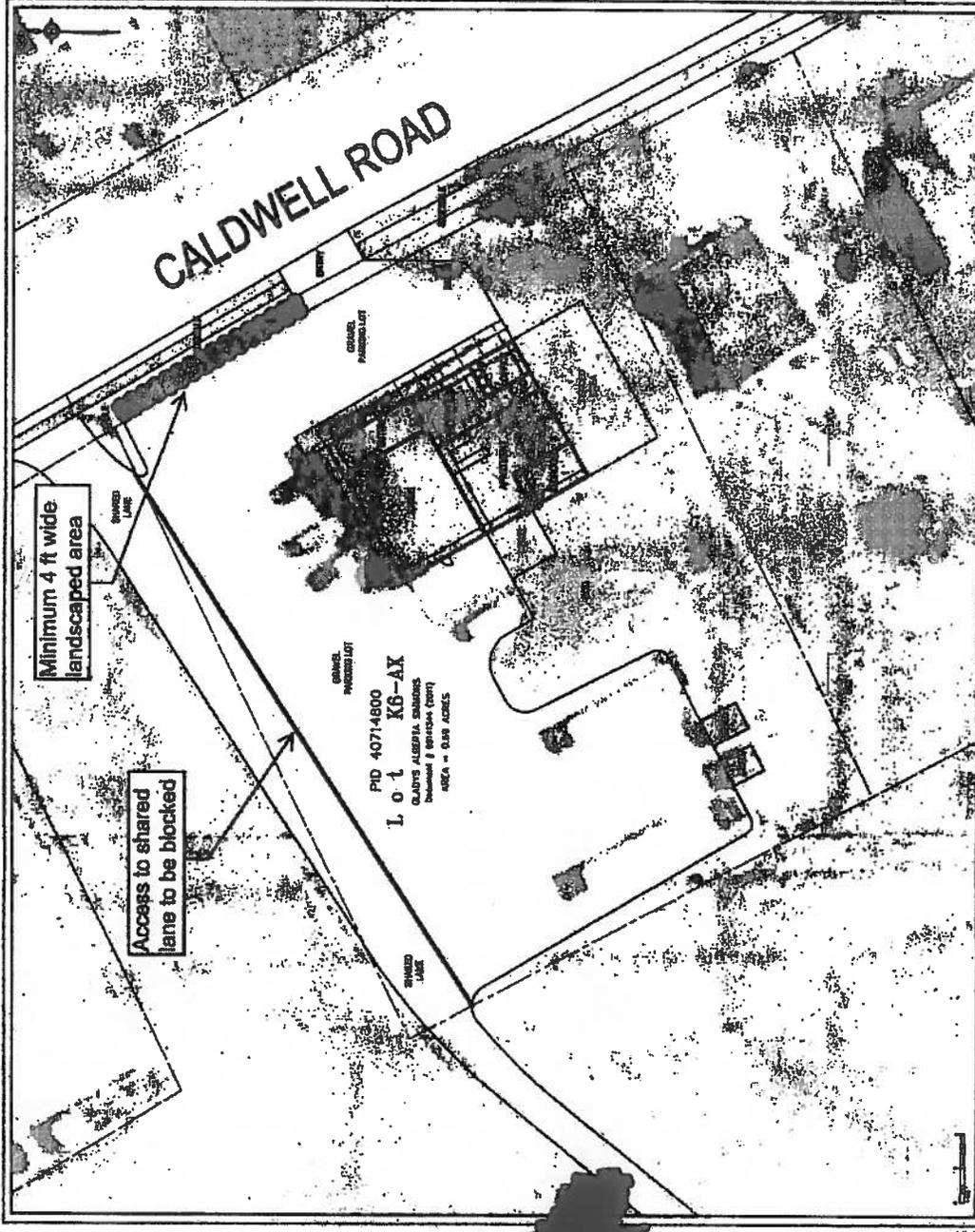
PROJECT: **LAKEVIEW**
 LOCATION: **LAKEVIEW**
 DATE: **10/1/01**

**Schedule B
Site Plan**

PROJECT NO.: **01-00000000**
 SHEET NO.: **101**
 DATE: **10/1/01**



1 of 1



This plan is prepared for the use of the City of Lakeview and is not to be used for any other purpose without the written consent of the City Engineer.

