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Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 13.1.2**  
**Halifax and West Community Council**  
**March 21, 2018**

**TO:** Chair and Members of Halifax and West Community Council

**SUBMITTED BY:** Original signed  
\_\_\_\_\_  
Kelly Denty, Acting Director, Planning and Development

**DATE:** February 13, 2018

**SUBJECT:** **Case 21192: Non-substantive amendment to an existing development agreement for 286 and 290 Herring Cove Road, Halifax.**

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**ORIGIN**

Application by W. M. Fares Architects for a non-substantive amendment to an existing development agreement to extend the commencement time.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.*

**RECOMMENDATION**

It is recommended that Halifax and West Community Council:

1. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report, to extend the development commencement date for the proposed development at 286 and 290 Herring Cove Road, Halifax; and
2. Require the amending development 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**

W. M. Fares Architects is applying for a non-substantive amendment to an existing development agreement to allow for a time extension to the development commencement date for a proposed development at 286 and 290 Herring Cove Road.

<b>Subject Site</b>	286 and 290 Herring Cove Road, Halifax
<b>Location</b>	East side of Herring Cove Road between Clovis Avenue and Bradbury Lane
<b>Regional Plan Designation</b>	Urban Settlement
<b>Community Plan Designation (Map 1)</b>	Low Density Residential under the Mainland South Secondary Planning Strategy (MSSPS) of the Halifax Municipal Planning Strategy (MPS)
<b>Zoning (Map 2)</b>	R-2 (Two Family Dwelling) Zone under the Halifax Mainland Land Use By-law (LUB)
<b>Size of Site</b>	8457.93 square metres (2.09 acres)
<b>Street Frontage</b>	Approximately 59.97 metres (196.75 feet)
<b>Current Land Use(s)</b>	Vacant
<b>Surrounding Use(s)</b>	a mixture of land uses exist in the area including: <ul style="list-style-type: none"><li>• a commercial building;</li><li>• a 14 unit residential building</li><li>• church, cemetery and an associated small private school;</li><li>• single and two unit dwellings; and</li><li>• an HRM pocket park.</li></ul>

### **Proposal Details**

On August 6, 2014, Halifax and West Community Council approved a development agreement to allow for the development of an apartment house at 286 and 290 Herring Cove Road, Halifax.

The agreement allows for a 42 unit apartment house and accessory uses. Section 7.3 of the agreement stipulates that the development must commence within four (4) years from the date of registration, establishing a commencement date of January 15, 2019.

The applicant proposes to amend the existing development agreement to allow for a time extension to the construction commencement date for the project. The request is to extend the commencement date by three (3) years resulting in a commencement date of January 15, 2021 or seven (7) years from the date of registration of the existing agreement.

### **Enabling Policy and LUB Context**

Policies 1.2.6, 1.2.7 and 1.2.8 of the Halifax MPS and Section 72(3) of the Halifax Mainland LUB allows for apartment house use 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.

## **DISCUSSION**

The proposed change relates only to the development commencement date; the development itself will be unchanged. This extension can be permitted as a non-substantive amendment pursuant to section 6.2.1(c) of the original development agreement. It is recommended that the date for development commencement be extended as outlined in the proposed amending development agreement (Attachment A).

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. Therefore, staff recommend that the Halifax and West Community Council approve the proposed amending 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 2017-18 C310 Planning Applications 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 reasonably 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 a 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: Proposed Amending Development Agreement

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Darrell Joudrey, Planner II, Current Planning, 902.490.4181

Report Approved by: Original signed  

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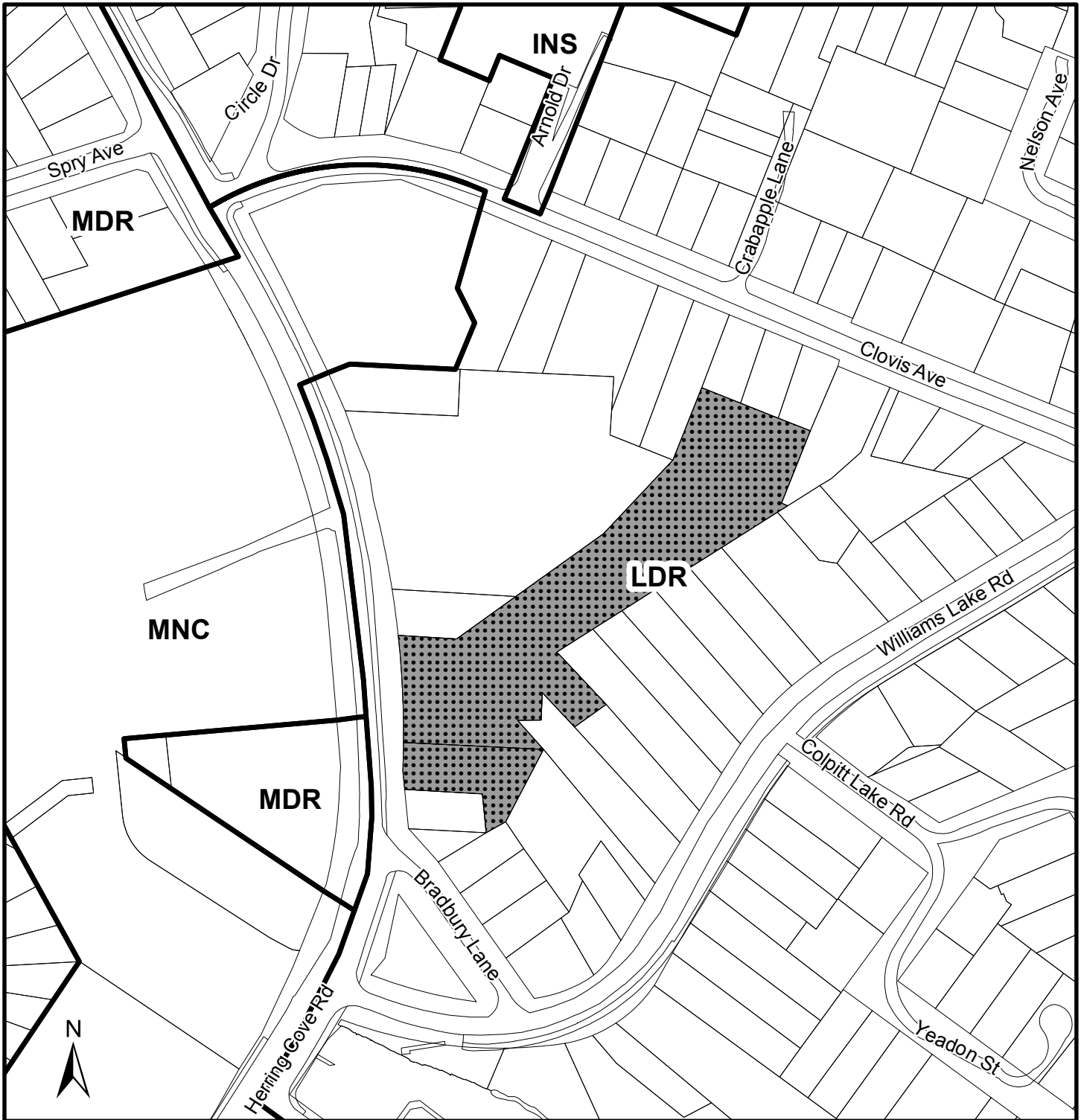
Maggie Holm, Principal Planner, Current Planning, 902.293-9496

Report Approved by: Original signed  

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Steve Higgins, Acting Manager of Current Planning, 902.490.4382

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**Map 1 - Generalized Future Land Use**

**HALIFAX**

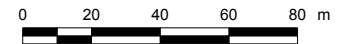
Herring Cove Road  
Halifax

■ 286/290 Herring Cove Road

Halifax Plan Area  
Mainland South Secondary Plan Area

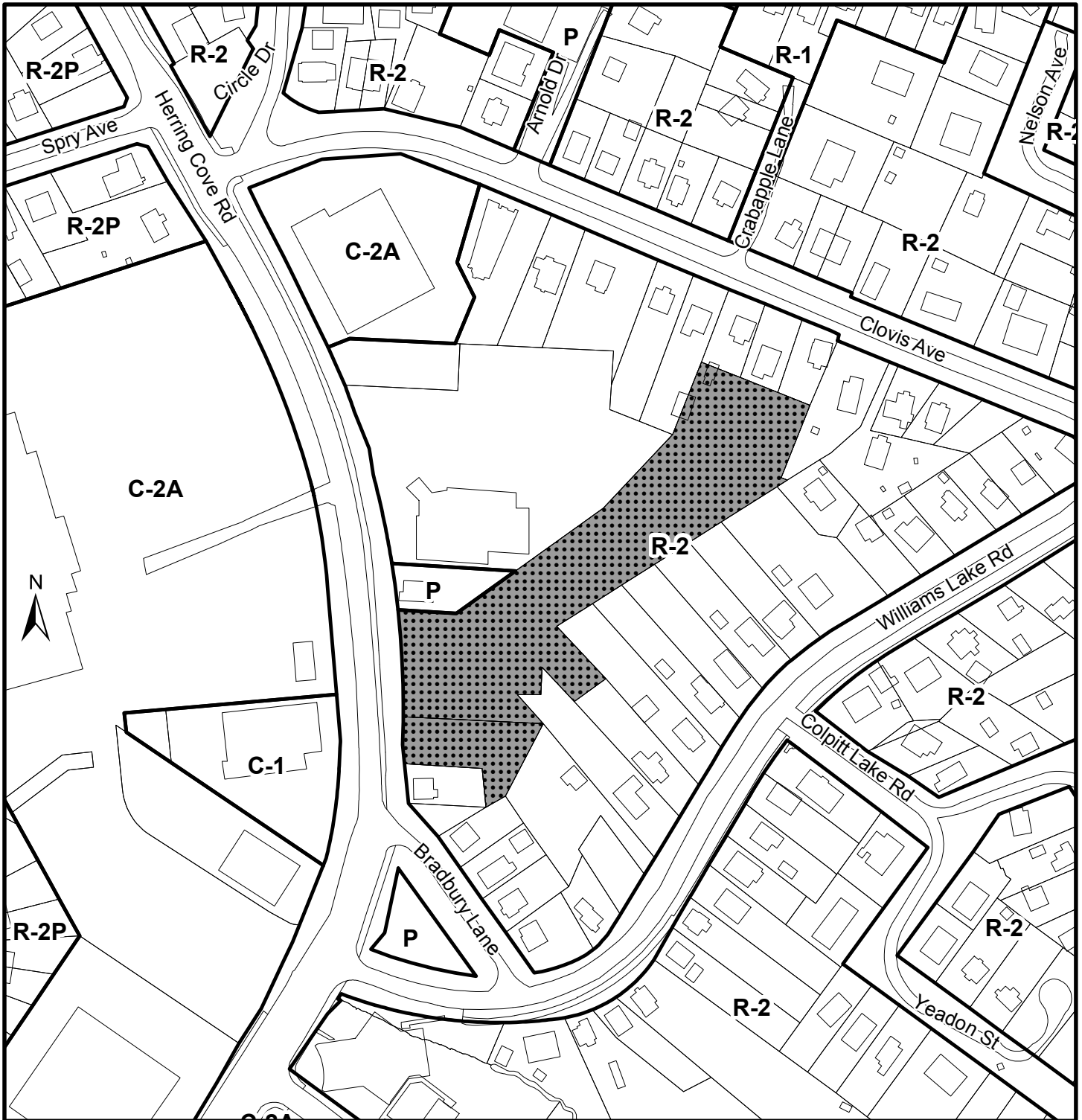
**Designation**

- LDR Low Density Residential
- MDR Medium Density Residential
- MNC Minor Commercial
- INS Institutional



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.



**Map 2 - Zoning**

Herring Cove Road  
Halifax

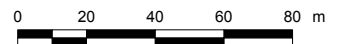
 286/290 Herring Cove Road

Halifax Mainland  
Land Use By-Law Area

**Zone**

- R-1 Single Family Dwelling
- R-2 Two Family Dwelling
- R-2P General Residential
- C-1 Local Business
- C-2A Minor Commercial
- P Park and Institutional

**HALIFAX**



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.

**Attachment A**  
**Proposed Amending Development Agreement**

THIS FIRST AMENDING DEVELOPMENT 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 286 and 290 Herring Cove Road, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Halifax and West Community Council of the Halifax Regional Municipality approved an application to enter into a development agreement to allow for an apartment house development on the Lands on August 6, 2014 (Municipal Case 16367), which said Agreement was registered at the Land Registration Office on January 15, 2015 as Document Number 106492052 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer wishes to amend the Existing Agreement to allow for a three (3) year extension to the date of construction commencement 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 **21192**;

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

1. Except where specifically varied by this Amending Development Agreement, all other terms, conditions and provisions of the Existing Agreement shall remain in effect.
2. 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:

7.3.1 In the event that development on the Lands has not commenced within ~~four (4)~~ **three (3)** years from the date of registration of this **First Amending Development 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.

3. Subsection 7.5.1 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:

7.5.1 If the Developer fails to complete the development after ~~six (6)~~ **five (5)** years from the date of the registration of this **First Amending Development** Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain this Agreement in its present form;
- (b) negotiate a new Agreement, or
- (c) discharge this 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: \_\_\_\_\_

**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



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