



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

Item No. 13.1.1
North West Community Council
April 9, 2018

TO: Chair and Members of North West Community Council

Original Signed

SUBMITTED BY:

Kelly Denty, Acting Director, Planning and Development

DATE: January 23, 2018

SUBJECT: **Case 21213: Discharging existing development agreement and Non-substantive amendment to an existing development agreement for 285 Larry Uteck Boulevard, Halifax.**

ORIGIN

Application by Ariana Properties Limited

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve, by resolution, the proposed Discharging Agreement, which shall be substantially of the same form as set out in Attachment A of this report;
2. Require the Discharging 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;
3. Approve, by resolution, the proposed Second 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 construction completion dates for the development at 285 Larry Uteck Boulevard, Halifax; and
4. Require the amending 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

Ariana Properties Ltd. is applying for a non-substantive amendment to an existing development agreement to allow for a time extension to the construction completion dates for a development at 285 Larry Uteck Boulevard. In order to amend the existing agreement, a second development agreement which was applied to the property in error, must also be discharged.

Subject Site	285 Larry Uteck Boulevard
Location	Eastern side of Larry Uteck Boulevard and north of Jacob Lane
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Wentworth Secondary Planning Strategy within the Halifax Municipal Planning Strategy (MPS)
Zoning (Map 2)	Wentworth Comprehensive Development District (WCDD) within the Halifax Mainland Land Use By-law (LUB)
Size of Site	Approximately 10.8 acres
Street Frontage	Approximately 214 meters (703 feet) on Larry Uteck Boulevard
Current Land Use(s)	Vacant
Surrounding Use(s)	Multiple unit residential development and vacant lands

Proposal Details

The applicant proposes to amend the existing development agreement to allow for a time extension to the construction completion dates for the project. On September 18, 2006, the former Chebucto Community Council approved a development agreement to allow for a high density residential development within Neighborhood B of the Wentworth Secondary Planning Strategy. The agreement allows for multi-unit residential buildings to be constructed along Larry Uteck Boulevard. To date, the southern portion of the area to which the agreement applies has been developed. For the subject site, two residential buildings are permitted to a maximum of 12 storeys per building exclusive of underground parking.

Section 4.4 of the agreement stipulates that the development must be completed within ten (10) years from the date of registration of the development agreement on the land title, establishing a mandatory completion date of January 14, 2018. The applicant purchased the property in 2012 and has not yet started construction on the subject site. The request to extend the completion date by six (6) years would allow the applicant adequate time to construct and market the 2 buildings. The proposed amendment would result in a completion date of six (6) years from the future date of registration of this proposed Second Amending Agreement.

Enabling Policy and LUB Context

The existing agreement was enabled under policies within the Wentworth and Bedford South Secondary Planning Strategies. This is the policy framework under which the agreement was considered and approved. No material amendments to this policy have been undertaken since the time the original agreement was approved, and as such the policy continues to apply to this time extension request.

Section 3.1 of the existing agreement identifies the extension of completion dates as not substantive and may be amended by resolution of Community Council.

Discharge Agreement

Prior to considering the above noted time extension, Community Council must take the steps to discharge a separate development agreement that is currently registered on the property in error.

In 2009, a development agreement (Planning Case 01194, Document # 94191039) was approved and registered on the adjacent lands, and due to an error at the time of registration it was incorrectly applied to the subject site but does not regulate those lands. In order to proceed with the time extension outlined above, the incorrect agreement must be discharged from the subject site.

Discharge of Development Agreements

The Halifax Regional Municipality Charter provides Council with a mechanism to discharge development agreements. Part VIII, Section 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. The Charter does not require a public hearing for the discharge of an agreement or a portion thereof. A development agreement may be discharged by resolution of Regional Council.

Approval Process

The approval process for this application involves two steps:

- i) First, North West Community Council must consider and, if deemed appropriate, discharge the development agreement that has been applied to the subject in error; and
- ii) Second, Council must consider and, if deemed appropriate, approve the proposed amending development 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 and seeking comments through the HRM website, and signage posted on the subject site. A public information meeting and public hearing are not required for the discharge of a development agreement or for a non-substantive amendment to a development agreement. The decision on both the discharge and the amendments is made by resolution of Council.

The proposal will potentially impact local residents and property owners.

North West Planning Advisory Committee

On September 6, 2017, the North West Planning Advisory Committee (PAC) recommended that the application be approved with no further recommendations. A report from the PAC to Community Council will be provided under separate cover.

DISCUSSION

Discharging Agreement

As noted, this agreement was registered on the property in error and as such, is being discharged in accordance with section 244(2) of the Halifax Regional Municipality Charter. The subject site is currently regulated by another development agreement and development of the property would be subject to those conditions.

Time Extension

As stated earlier, the requested amendments to the existing agreement are to extend the construction completion dates to allow each building to be built consecutively over the next six (6) years. The development itself will be unchanged in form and use. Therefore, it is recommended that the dates for construction completion be extended as outlined in the proposed amending development agreement (Attachment B).

Conclusion

The proposed discharge would enable the subject property to be developed in accordance with the provisions of the correct development agreement currently in place on the property. Staff recommends that North West Community Council discharge the incorrectly registered agreement through the discharging agreement contained in Attachment A.

In terms of the time extension, staff have reviewed the proposal in respect to all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. Therefore, staff recommend that the North 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 development agreement. The administration of the proposed development 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 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 development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

For the discharge agreement:

1. North West Community Council may choose not to discharge the Development Agreement and therefore, development on the property would be regulated by two Agreements, one of which has been applied incorrectly. A decision of Council to refuse to discharge a development agreement is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the HRM Charter.

For the amending development agreement:

1. North 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. North 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

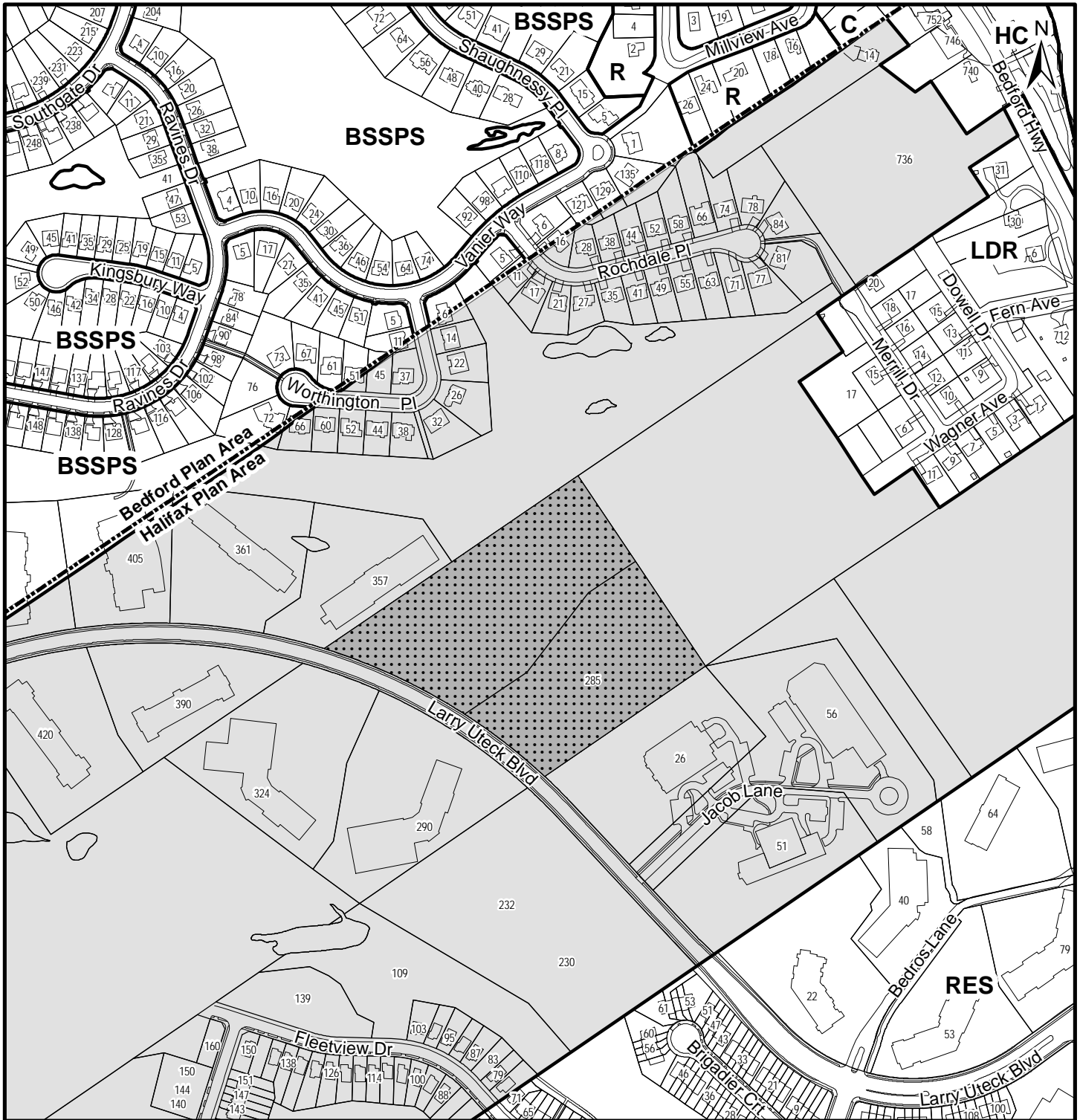
Attachment A: Proposed Discharging Agreement
Attachment B: Proposed Second Amending Development Agreement

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Melissa Eavis, Planner III, Current Planning, 902-490-3966



Original Signed

Report Approved by: _____
Carl Purvis, Program Manager, Urban and Rural Planning Applications, 902.490.4797



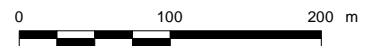
Map 1 - Generalized Future Land Use
285 Larry Uteck Boulevard
PID 41340928 & 41379264

HALIFAX

-  Subject Site
-  Wentworth Secondary Plan Area

Designations

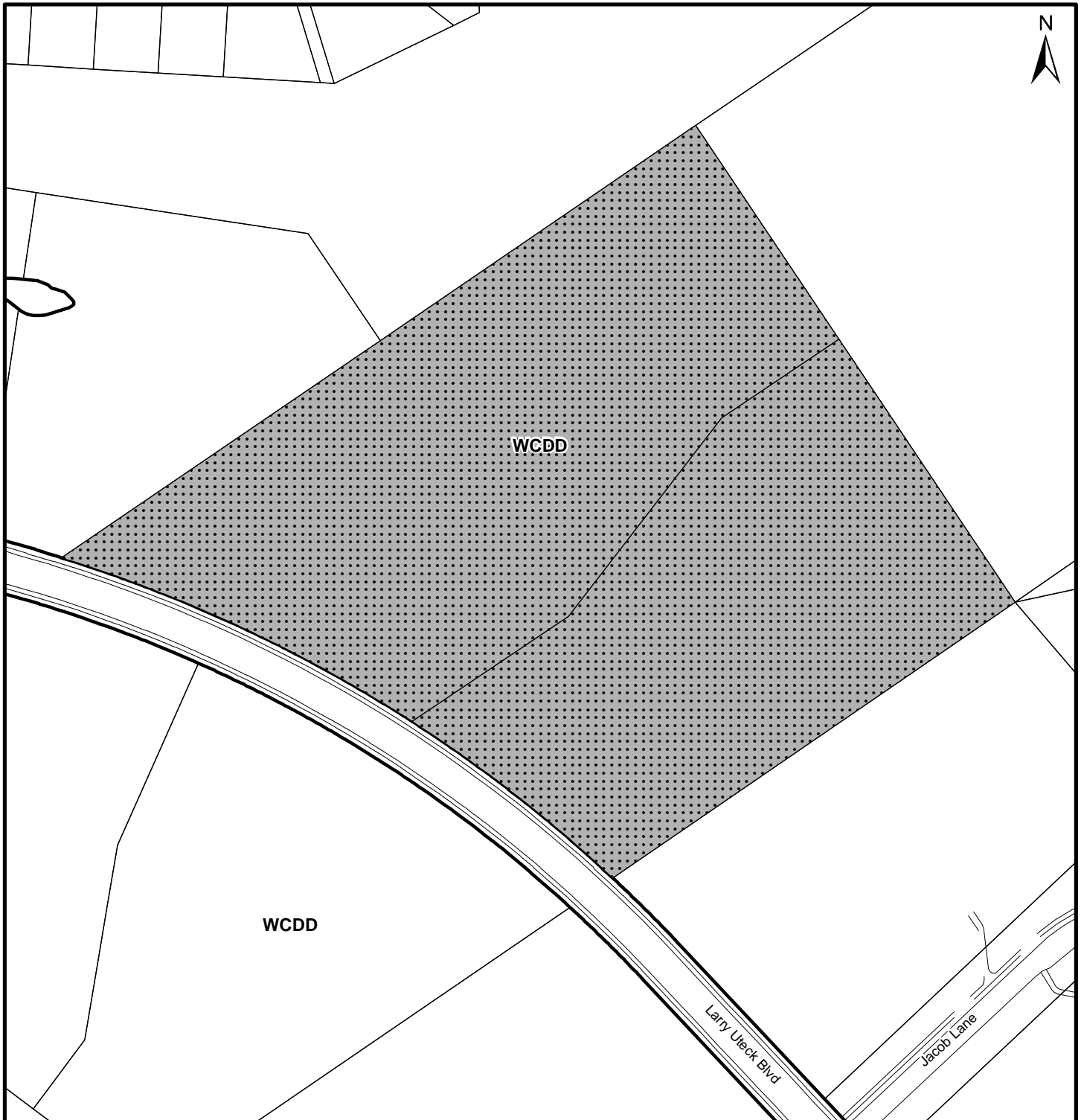
- R Residential
- RES Residential Environments
- LDR Low Density Residential
- C Commercial
- HC Highway Commercial
- BWSPS Bedford South Secondary Planning Strategy



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.

Halifax Plan Area
 Wentworth Secondary Planning Strategy

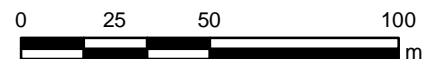


Map 2 - Zoning
285 Larry Uteck Boulevard
PID 41340928 & 41379264

HALIFAX

 Subject Site

Zone
 WCDD Wentworth 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.

Halifax Mainland Land
 Use By-Law

**ATTACHMENT A
PROPOSED DISCHARGE AGREEMENT**

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

BETWEEN:

[INSERT REGISTERED OWNER NAME],

a body corporate 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 [INSERT PID NUMBER(S)] along Larry Uteck Boulevard, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the former Chebucto Community Council approved an application to enter into a development agreement to allow a mixed-use development on July 6, 2009, and which was applied to the Lands in error, referenced as Municipal Case Number 01194, and which said development agreement was registered on September 2, 2009 at the Registry of Deeds in Halifax as Document Number 94191039 (hereinafter called 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 North West Community Council for the Municipality approved this request by resolution at a meeting held on **[INSERT DATE]** referenced as Municipal Case Number 21213 (Part 1);

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 the development agreement dated September 18, 2006, and registered at the Land Registration Office on January 4, 2008 as Document Number 89732771, and all amendments to said development agreement.

IN WITNESS WHEREOF 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

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
PROPOSED SECOND AMENDING AGREEMENT**

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

BETWEEN:

[INSERT REGISTERED OWNER NAME],

a body corporate 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 PID 41379264, and PID 41340928 along Larry Uteck Boulevard, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the former Chebucto Community Council of the Halifax Regional Municipality approved an application to enter into a Development Agreement to allow for a residential development on September 18, 2006 (Municipal Case 00624), which said Development Agreement was registered at the Land Registration Office on January 14, 2008 as Document Number 89732771 (hereinafter called the "Original Agreement");

AND WHEREAS the Chebucto Community Council of the Halifax Regional Municipality approved an application to amend the Original Agreement to enable additional residential development prior to the completion of construction of an interchange at Highway 102 and Larry Uteck Boulevard on June 7, 2010 (Municipal Case 16023), which said Amending Agreement was registered at the Land Registration Office on August 5, 2010 as Document Number 96510293 (hereinafter called the "First Amending Agreement"), and which does apply to the Lands;

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 six (6) year extension to the dates of construction completion of the development pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 3 of the Existing Agreement;

AND WHEREAS the North West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number **21213**;

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

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

3. Subsection 4.4 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:

4.4 If the developer fails to complete the development, or after ~~ten years~~ **six (6) years** from the date of registration of ~~this~~ **the Second Amending** Agreement at the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- a) retain the Agreement in its present form;
- b) negotiate a new Agreement;
- c) discharge this agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law, as may be amended.

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

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 Kevin Arjoon, 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