



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

Item No. 10.1.2
Harbour East – Marine Drive Community Council
March 3, 2016

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

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: December 16, 2015

SUBJECT: **Case 20068: Development Agreement, 1, 3 & 5 Cumberland Drive, Cole Harbour**

ORIGIN

Application by Jamieson Holdings Corp. Ltd.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

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

1. Give Notice of Motion to consider approval of the proposed development agreement, as contained in Attachment A of this report, to enable a lounge use at 1-5 Cumberland Drive, Cole Harbour and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of this report, to enable a lounge use at 1-5 Cumberland Drive, Cole Harbour; and
3. Require that the proposed development 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

Jamieson Holdings Corp. Ltd. is applying to allow a lounge use within an existing commercial development located at the southwest intersection of Cole Harbour Road and Cumberland Drive, Cole Harbour. The Municipal Planning Strategy and Land Use By-law for Cole Harbour / Westphal require lounge uses to be considered through the development agreement process.

Subject Site	Comprised of three properties – 1, 3 and 5 Cumberland Drive
Location	South-western corner of Cole Harbour Road and Cumberland Drive
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	Community Commercial under the Cole Harbour / Westphal Municipal Planning Strategy (MPS)
Zoning (Map 2)	C-2 (General Business) under the Cole Harbour / Westphal Land Use By-law (LUB)
Size of Site	7,909 square metres (85,132 square feet)
Street Frontage	119.8 metres (393 feet) along Cumberland Drive 73.8 metres (242 feet) along Cole Harbour Road
Site Conditions	Fully developed and generally flat, with a treed buffer at the south-western property line where the property abuts residentially zoned properties. The grade is approximately 2.7 metres (9 feet) lower than the properties located to the west.
Current Land Uses	Contains 4 buildings which includes a mix of commercial uses such as restaurants, personal service shops, and retail uses and surface parking for 103 cars.
Surrounding Land Uses	The surrounding area is comprised of commercial, residential, and institutional uses. Surrounding land uses include: <ul style="list-style-type: none">• Commercial uses including Rona, Sobeys and the Royal Bank located to the South, West and East;• Low density residential uses located to the North and West;• Multiple unit dwellings and religious buildings located to the East.

Enabling Policy and Zoning Context

Policy HC-5 enables Harbour East – Marine Drive Community Council to consider lounge uses through a development agreement (Attachment B).

The Community Commercial designation and C-2 Zone permit a variety of commercial uses that principally serve the local community. Such uses include retail stores, offices and hotels. The designation and zone also allow for small scale multiple unit dwellings and community uses (see Attachment C).

Proposal

The applicant proposes to develop a lounge use in conjunction with the existing restaurant, Jamieson's Irish House and Grill (see Maps 1 and 2).

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is consistent with the intent of the MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Proposed Development Agreement

Attachment A contains the proposed development agreement for the subject site and addresses the following matters:

- the maximum size of the proposed lounge use is limited to 210 square metres (2,262 square feet);
- no more than one lounge shall be permitted on the subject site;
- outdoor patios or decks associated with the lounge are not permitted where the property abuts a residentially zoned property; and
- video lottery terminals are not permitted in conjunction with the lounge use; and
- all three properties which make up the subject site must be included as part of the development agreement to enable the lounge use.

The existing requirements in the Land Use By-law already adequately regulate setbacks, landscaping adjacent to residential uses, parking requirements and outdoor storage. As such, no additional provisions regarding setbacks and buffering are included in the development agreement.

The attached development agreement will permit a lounge use, subject to the controls identified above. Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Appropriateness of the Subject Site

Policy HC-5 supports lounge uses in commercial developments that are greater than 929 square metres (10,000 square feet) in area. Generally, this policy has been interpreted to apply to a single property. However, this subject site, comprised of three properties, is considered unique. Unlike other commercial developments in this area, the subject site was developed as a unified commercial site that includes 4 commercial buildings that total 1,976.3 square metres (21,273 square feet) in area. The buildings were developed with a shared design, the signage for the two main buildings is the same design, parking is shared throughout the site and there are no clear indicators of the location of property lines.

Further, traditional shopping centres, where all shops are contained within a single building, such as a shopping mall, are becoming a less common form of development. Newer shopping centres will often be comprised of various buildings containing one or two shops. Staff are unaware of any similar instances in the Cole Harbour / Westphal Plan Area, but such development is common in newer developments, such as Dartmouth Crossing. As such, although the subject site is located on three separate properties, it meets the intent of policy HC-5 to consider lounge uses within large commercial sites that are well separated from residential areas.

Separation from Residential uses

Policy HC-5 requires the consideration of separation from residential uses. Although the subject site is mainly surrounded by commercial uses, it does abut a low density residential neighbourhood. The closest residential unit is located approximately 35 metres (115 feet) from the proposed lounge. However, the residential neighbourhood is located at a higher elevation by over 2.7 metres (9 feet), which provides further separation between the residential neighbourhood and commercial development. In addition, residential uses are further buffered by existing vegetation and trees, as already required by the LUB.

The proposed development agreement further prohibits outdoor patios where the lounge use abuts a residentially zoned property, and does not permit video lottery terminals in conjunction with the lounge use.

Conclusion

Staff have reviewed the request in terms of all relevant policy criteria and advise that the proposal is consistent with the intent of the MPS. The subject site meets the intent of policy HC-5 due to its unique nature as a large single commercial development located over three properties. In addition, the use is considered appropriate for the subject site because it is located within a mixed use commercial complex

and separated from existing residential uses. Through the provisions of the LUB and proposed development agreement, potential land use conflicts are considered minimal. Therefore, staff recommend that Harbour East - Marine Drive Community Council approve the proposed development agreement.

FINANCIAL IMPLICATIONS

There are no financial 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 Development Agreement. The administration of the Development Agreement can be carried out within the approved 2015/16 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through notices posted on the HRM website and mailed to property owners and residents within the notification area as shown on Map 2.

A public hearing must be held by Harbour East - Marine Drive Community Council before they can consider approval of the proposed development agreement. Should Harbour East - Marine Drive Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will continue to be notified as shown on Map 2. The HRM website will also be updated to indicate notice of the public hearing.

The proposed development agreement will potentially impact the following stakeholders: local residents, and business.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. Harbour East - Marine Drive Community Council may choose to approve proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant, the preparation of a supplementary staff report and an additional public hearing. A decision of Community Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East - Marine Drive may choose to refuse the proposed development agreement, and in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed LUB amendment or 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 Notification

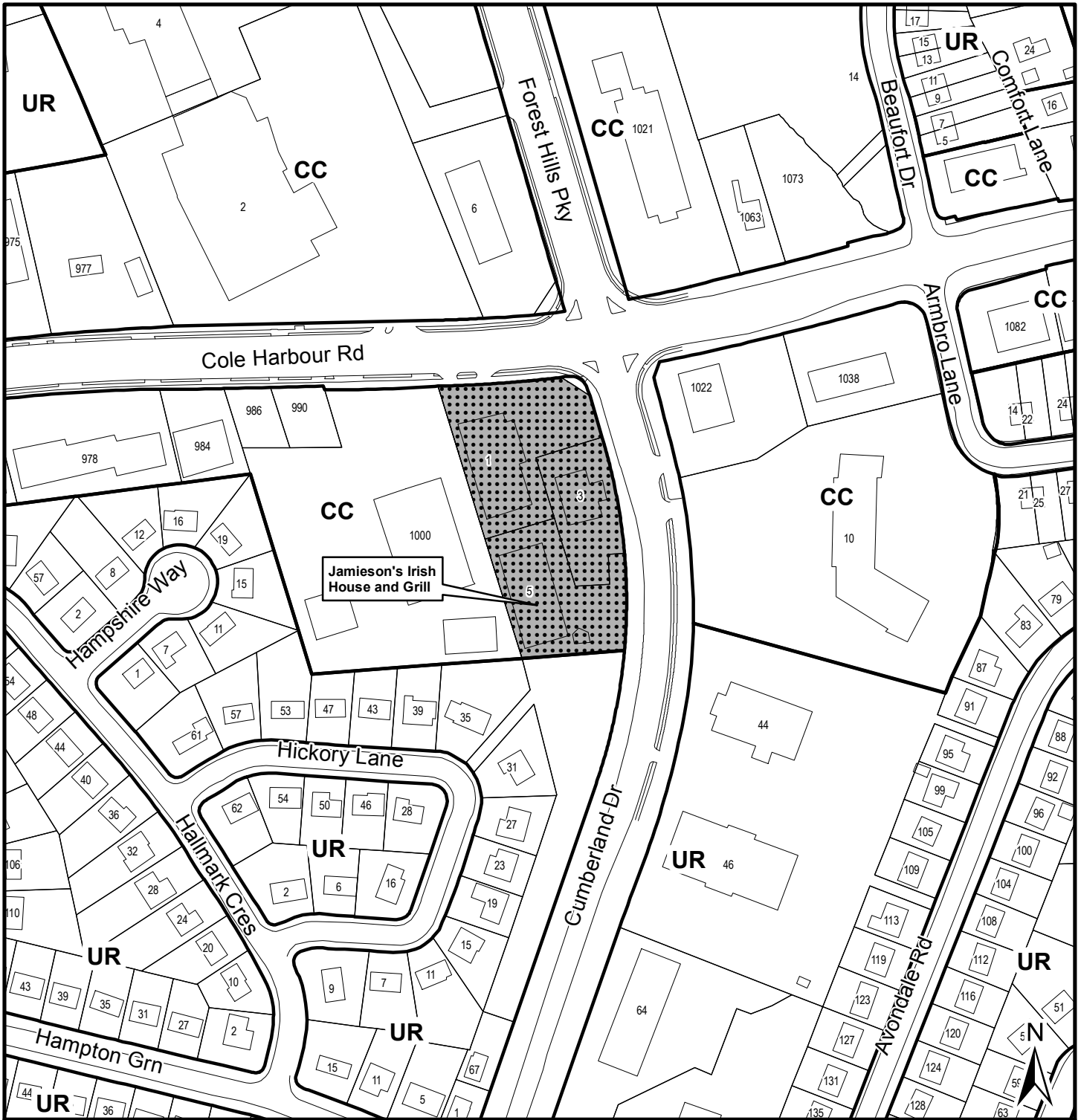
Attachment A	Proposed Development Agreement
Attachment B	Review of Relevant Municipal Planning Strategy Policies for Cole Harbour / Westphal
Attachment C	Excerpt from Land Use By-law for Cole Harbour / Westphal

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: Jillian MacLellan, Planner, Development Approvals, 902.490.4423

Original Signed


Report Approved by: Kelly Denty, Manager of Development Approvals, 902.490.4800



Map 1 - Generalized Future Land Use

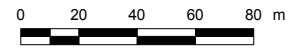
1-5 Cumberland Drive,
Cole Harbour

HALIFAX

 Area of Proposed Development Agreement

Designation

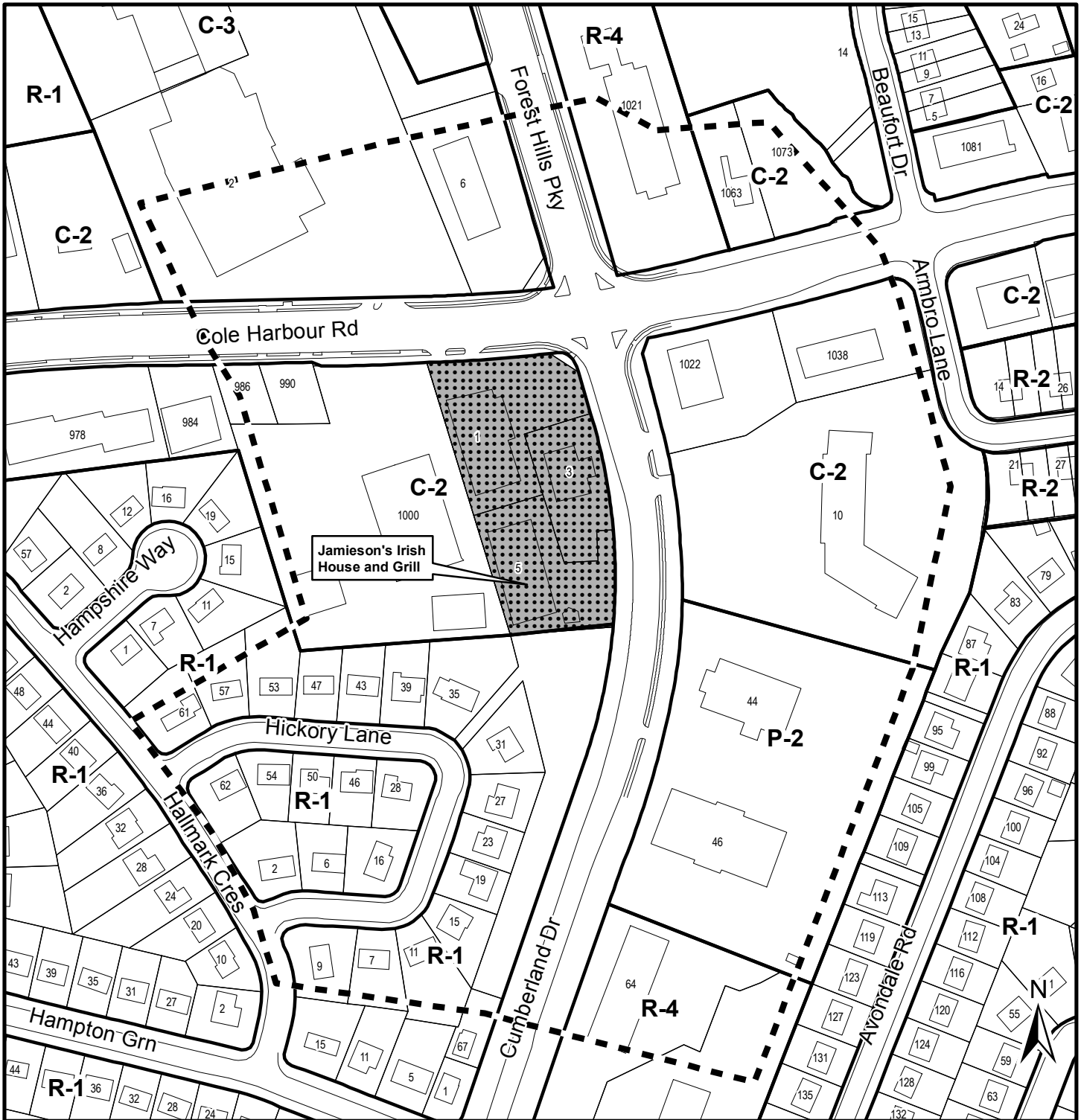
UR Urban Residential
CC Community Commercial



Cole Harbour/Westphal
Plan Area

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.




Map 2 - Zoning and Notification

1-5 Cumberland Drive,
Cole Harbour

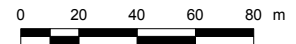
HALIFAX

 Area of Proposed Development Agreement

 Area of notification

Cole Harbour/Westphal
Plan Area

- Zone**
- R-1 Singe Unit Dwelling
 - R-2 Two Unit Dwelling
 - R-4 Multiple Unit Dwelling
 - C-2 General Business
 - C-3 Shopping Centre
 - P-2 Community Facility



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
Proposed Development Agreement

THIS AGREEMENT made this day of , 20__,

BETWEEN:

[INSERT PROPERTY OWNER]

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 1, 3 & 5 Cumberland Drive (**[INSERT PID]**) 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 lounge use in conjunction with a mixed tenant commercial development pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy HC-5 of the Cole Harbour / Westphal Municipal Planning Strategy and Section 3.16(r) of the Cole Harbour / Westphal Land Use By-law;

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 20068;

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, subdivision and use 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 and/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

All words unless otherwise specifically defined herein shall be as defined in the applicable Land

Use By-law and Regional Subdivision By-law.

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, is in conformance with the following Schedules attached to this Agreement:

Schedule A Legal Description of the Lands

3.2 General Description of Land Use

The uses of the Lands permitted by this Agreement are the following:

- (a) any use permitted by the underlying zoning, as amended from time to time; and
- (b) a lounge use as permitted by this Agreement.

3.4 Lounge Use

3.4.1 The lounge use shall:

- (a) be no larger than 210 square metres (2,262 square feet) in gross floor area; and
- (b) not have an outdoor patio or deck located in the rear or side yard where the subject property abuts a residentially zoned property; and

3.4.2 No more than one lounge use shall be permitted on the Lands.

3.4.3 Video lottery terminals shall not be permitted in conjunction with the lounge use.

3.4.4 The lounge use shall only be permitted provided all of the Lands, 1, 3 & 5 Cumberland Drive, and further described in Schedule A in this Agreement, being subject to this Agreement.

3.4.5 The total area of the lounge use, as outlined in clause 3.4.1(a), shall not be in addition to the total commercial gross floor area permitted in the underlying zone, as amended from time to time.

3.5 Signage

Exterior signs shall meet the requirements of the underlying zone, as amended from time to time.

3.6 Outdoor Lighting

Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways, shall be arranged so as to divert the light away from streets, adjacent lots.

3.7 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, recreational amenities, 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.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All construction shall conform to the most current edition of the HRM Municipal Design Guidelines and Halifax Water's Design and Construction Specifications and shall receive written approval

from the Development Engineer prior to undertaking any work.

PART 5: AMENDMENTS

5.1 Substantive Amendments

Amendments to any matters not identified under Section 5.2 shall be deemed substantive and shall only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

5.2 Non-Substantive Amendments

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

- (a) An increase, no larger than 20%, to the gross floor area of the lounge use as identified in Section 3.4.1(a) of this Agreement;
- (b) The granting of an extension to the date of commencement of development, as identified under Section 6.3 of the Agreement; and
- (c) The granting of an extension to the length of time for the completion of the development, as identified under Section 6.4 of the Agreement;

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 for Halifax County, 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 thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is 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 three years 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 Agreement, commencement of development shall mean the application of a development permit for the lounge use.
- 6.3.3 Council may consider granting an extension of the commencement of development time period through a resolution under Section 5.2, if the Municipality receives a written request from the Developer prior to the expiry of the commencement of development time period.

6.4 Completion of Development

Upon the completion of the development or portions thereof, or after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, 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; or
- (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 for Cole Harbour / Westphal, as may be amended from time to time.

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 covenant or condition of this Agreement after the Municipality has given the Developer thirty days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, 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 defense 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; and/or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remediation 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 _____, _____.

SIGNED, SEALED AND DELIVERED in the presence of:

Witness

HALIFAX REGIONAL MUNICIPALITY

SIGNED, SEALED AND DELIVERED in the presence of:

Witness

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
Review of Relevant Municipal Planning Strategy Policies for Cole Harbour / Westphal

Policy Criteria	Comment
<p><i>Entertainment uses such as beverage rooms and amusement arcades, can benefit from locations in larger shopping centres where access and parking are readily controlled, and effects upon residential areas caused by these uses' extended hours of operation are minimized.</i></p>	
<p><i>HC-5 Notwithstanding Policies CC-2 and HC-2, within the Community Commercial and Highway Designations, it shall be the intention of Council to permit beverage room and other entertainment uses only in commercial structures having greater than ten thousand (10,000) square feet, according to the development agreement provisions of the Planning Act. In considering such developments, Council shall have regard to the following:</i></p>	<p>The proposed development agreement permits a lounge use, within an existing commercial development that totals 1976.3 square metres (21,273 square feet) in floor area.</p> <p>Although the subject site consists of three properties, it is considered unique as it functions as a single development. Please see the main body of the staff report for further discussion.</p>
<p><i>(a) separations from residential uses;</i></p>	<p>The proposed lounge use is located in an existing development that is primarily surrounded by commercial uses. The subject property does abut a low density neighbourhood with the closest residential unit located approximately 35 metres (115 feet) away. The residential neighbourhood is located at a higher elevation (over 2.7 metres (9 feet)). The change in elevation together with the existing setback provides adequate separation. Separation is further achieved through the development agreement that specifies that no outdoor patios are permitted in the rear yard and side yard where the site abuts a residentially zoned property.</p> <p>Further the LUB already requires landscaping where a commercial use in the C-2 Zone is adjacent to a property zoned for or used for residential or community uses.</p>
<p><i>(b) vehicular access and egress;</i></p>	<p>The proposed lounge use is located in an existing development that includes existing vehicle access and egress.</p>

<p>(c) <i>the location and extent of open storage and/or display;</i></p>	<p>The lounge use will be subject to the open storage and display requirements of the Land Use By-law for Cole Harbour / Westphal.</p>
<p>(d) <i>the location of parking and loading areas;</i></p>	<p>The proposed lounge use is located in an existing development that includes parking in the front yard and loading in the rear yard. The development agreement does not include any further specifications on the location of parking or loading.</p>
<p>(e) <i>drainage both on and off the site;</i></p>	<p>There is no exterior development proposed as part of the proposed lounge use.</p>
<p>(f) <i>any landscaping of such uses; and</i></p>	<p>The LUB currently includes requirements for landscaping where a commercial use in the C-2 Zone is adjacent to a property zoned for or used for residential or community uses. The proposed development agreement does not require any further changes to the landscaping.</p>
<p>(g) <i>the provisions of Policy IM-11.</i></p>	<p>See below</p>
<p><i>IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:</i></p>	
<p>(a) <i>that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;</i></p>	<p>The proposed development agreement conforms with the intent of the planning strategy regarding allowing drinking establishments in commercial areas and is subject to the requirements of other municipal by-laws and regulations.</p>
<p>(b) <i>that the proposal is not premature or inappropriate by reason of:</i></p>	<p>The proposed development agreement is not considered premature or inappropriate.</p>
<p>(i) <i>the financial capability of the Municipality to absorb any costs relating to the development;</i></p>	<p>The proposed development agreement will not result in any addition costs to the municipality</p>

<i>(ii) the adequacy of sewer and water services;</i>	The proposal was reviewed by Halifax Water and there were no concerns regarding the adequacy of sewer and water services.
<i>(iii) the adequacy or proximity of school, recreation and other community facilities;</i>	N/A
<i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i>	Staff did not identify any concerns regarding the adequacy of surrounding road networks.
<i>(v) the potential for damage to or destruction of designated historic buildings and sites.</i>	There are no historic buildings or sites located in close proximity to this site.
<i>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i>	
<i>(i) type of use;</i>	The proposed development agreement allows for a lounge use no larger than 210 square metres (2,262 square feet), in addition to the uses already permitted in the C-2 Zone of the LUB.
<i>(ii) height, bulk and lot coverage of any proposed building;</i>	Height, bulk and lot coverage requirements are subject to the requirements of the LUB.
<i>(iii) traffic generation, access to and egress from the site, and parking;</i>	<p>It is not anticipated that the traffic generation will significantly change based on the proposed lounge use.</p> <p>The existing access and egress will not be changed as part of this development agreement.</p> <p>Parking will continue to be subject to the requirements of the LUB.</p>
<i>(iv) open storage;</i>	Open storage will be subject to the requirements of the LUB
<i>(v) signs; and</i>	Signage will be subject to the requirements of the LUB

<p><i>(vi) any other relevant matter of planning concern.</i></p>	<p>There are no further matters of planning concern.</p>
<p><i>(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and</i></p>	<p>N/A</p>
<p><i>(e) any other relevant matter of planning concern.</i></p>	<p>There are no further matters of planning concern.</p>
<p><i>(f) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)</i></p>	<p>N/A</p>

Attachment C
Excerpt from the Land Use By-law for Cole Harbour / Westphal

PART 17: C-2 (GENERAL BUSINESS) ZONE

17.1 C-2 USES PERMITTED

No development permit shall be issued in any C-2 (General Business) Zone except for the following:

Commercial Uses

Retail stores;
Food stores;
Service and personal service shops;
Offices;
Commercial schools;
Banks and financial institutions;
Restaurants except drive-in or take-out restaurants;
Theatres and cinemas except drive-in theatres;
Motels, hotels and motor inns;
Funeral establishments;
Taxi and bus depots;
Parking lots;
Veterinary hospitals and indoor kennels;
Existing service stations;
Existing building supply outlets.

Automotive repair uses (minor) (RC-May 11/99;E-Jun 26/99)

Residential Uses

Existing dwellings;
Multiple unit dwellings containing no more than twelve (12) dwelling units.

Community Uses

Open space uses;
Institutional uses;
Fraternal centres and halls.

17.2 C-2 ZONE REQUIREMENTS: COMMERCIAL

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

Minimum Lot Area:	6,000 square feet (557.4 m ²)
Minimum Frontage:	60 feet (18.3 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear or Side Yard	15 feet (4.6 m)
Maximum Lot Coverage	50 percent
Maximum Height of Main Building	35 feet (10.7 m)
Minimum Width of Main Building	20 feet (6.1 m)

17.3 OTHER REQUIREMENTS: COMMERCIAL FLOOR AREA

Notwithstanding the provisions of Section 17.1, no commercial building within any C-2 Zone shall exceed ten thousand (10,000) square feet (929 m²) of gross floor area.

17.4 OTHER REQUIREMENTS: COMMERCIAL USES

Where uses are permitted as Commercial Uses in any C-2 Zone, the following shall apply:

- (a) **No outdoor storage shall be permitted and outdoor display shall be restricted to the temporary or seasonal display of plant materials or perishable goods normally associated with retail uses permitted under the provisions of Section 17.1 provided that no such display area is located within any parking area required pursuant to Part 4 of this by-law. (CHWEPCBCC-Mar 28/96;E-Apr 25/96)**
- (b) No portion of any lot shall be used for the collection and storage of refuse unless the refuse containers are screened.
- (c) No portion of any parking space shall be located in any required rear yard.
- (d) Notwithstanding subsection (a), in the case of existing building supply outlets:
 - (i) No open storage or outdoor display shall be permitted in any required front yard or flankage yard;
 - (ii) Where any side or rear property line abuts any Residential Zone, no open storage shall be permitted in any side yard or rear yard except where an opaque fence, measuring at least eight (8) feet (2.4 m) has been erected; and
 - (iii) No open storage shall be permitted within six (6) feet (1.8 m) of any side or rear property line or be permitted to exceed eight (8) feet (2.4 m) in height within fifteen (15) feet (4.6 m) of any side or rear property line.
- (e) Access to a lot shall only be from Cole Harbour Road, Cumberland Drive or Forest Hills Drive.
- (f) **For any new or expanded commercial use which is adjacent to property that is zoned for or used for residential or community uses, a visual screen shall be provided in accordance with the following:**
 - (i) **Materials** - shall contain either a vegetative screen, an opaque fence, or a combination of both natural and manmade materials which will form an effective year-round screen.
 - (ii) **Height** - screening shall be at least five (5) feet in height. Plant materials, when planted, shall not be less than three and one-half (3 1/2) feet in height if of a species or variety which shall attain the required height within three (3) years of planting. Height shall be measured from the finished grade.
 - (iii) **Width** - screening shall be in a strip of landscaped open space a minimum of four (4) feet in depth running the entire length of the adjacent property line.
 - (iv) **Maintenance** - all required plant materials shall be maintained and planting areas kept free of litter. All required fences shall be maintained in good repair and appearance and repaired or replaced when necessary. (RC-May 11/99;E-Jun 26/99)
- (g) For any new or expanded commercial use, the following landscaping provisions shall apply:
 - (i) Within the front yard area, the first ten (10) feet bordering the road right-of-way shall be fully landscaped, except where driveway or pedestrian access points are required.

- (ii) Landscaping shall consist of grass and a minimum of one shrub for each fifty (50) square feet of required landscaped area and one tree for every fifty (50) feet of lot width. All landscaping materials shall be maintained. (RC-May 11/99;E-Jun 26/99)
- (h) Automotive repair uses, (minor) and (major), shall be wholly contained within a building. (RC-May 11/99;E-Jun 26/99)

17.5 C-2 ZONE REQUIREMENTS: RESIDENTIAL USES

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

Minimum Lot Area:	6,000 square feet (557.4 m ²) plus 1,500 square feet (139.4 m) per dwelling unit in excess of the first three (3) units
Minimum Frontage:	60 feet (18.3 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear or Side Yard	½ the height of the main building
Maximum Lot Coverage	50 percent
Maximum Height of Main Building	35 feet (10.7 m)

17.6 OTHER REQUIREMENTS: MULTIPLE UNIT DWELLINGS

Where multiple unit dwellings are erected in any C-2 Zone, the following shall apply:

- (a) An amenity area of not less than one hundred (100) square feet (30.5 m) per dwelling unit shall be provided.
- (b) Where any multiple unit dwelling is to be erected in a C-2 Zone on lands which abut any residential zone except an R-4 (Multiple Unit Dwelling) one, no portion of any parking space shall be provided within the abutting yard of the C-2 Zone except where a fence or other visual and physical barrier is provided in which case no portion of any parking space shall be located within five (5) feet (1.5 m) of the abutting residential zone.
- (c) Access to a lot shall only be from Cole Harbour Road, Cumberland Drive or Forest Hills Drive.

17.7 C-2 ZONE REQUIREMENTS: COMMUNITY USES

In any C-2 Zone, where uses are permitted as Community Uses, no development permit shall be issued except in conformity with the provisions of Part 21 as are applicable.