



P.O. Box 1749  
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**Item No. 13.1.5**  
**North West Community Council**  
**November 15, 2016**

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

**SUBMITTED BY:** ORIGINAL SIGNED

\_\_\_\_\_  
Bob Bjerke, Chief Planner and Director, Planning and Development

**DATE:** October 6, 2016

**SUBJECT:** **Case 20781: Non-substantive development agreement amendments to extend the dates of commencement and completion, 644 Bedford Highway, Halifax**

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**ORIGIN**

Application by W M Fares Architects

**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 amending agreement as contained in Attachment A of this report to enable an extension of the commencement and completion dates contained within the existing development agreement at 644 Bedford Highway, Halifax; and
2. 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**

W M Fares Architects is applying to extend by three years the date of project commencement for the property at 644 Bedford Highway, Halifax. The existing agreement permits a 52 unit, seven storey residential building including indoor and outdoor amenity space and underground and surface parking. The agreement was approved by North West Community Council on January 20, 2014, and was registered on March 17, 2014. The existing agreement requires commencement of the development within three years of registration (i.e. by March 17, 2017), with 'commencement' defined as the issuance of a Construction Permit. A Construction Permit has not yet been issued, and the applicant has requested an extension to the date of commencement for the project.

<b>Subject Site</b>	644 Bedford Highway, Halifax
<b>Location</b>	Halifax Plan Area, Halifax Mainland Land Use By-law Area
<b>Regional Plan Designation</b>	US (Urban Settlement)
<b>Community Plan Designation (Map 1)</b>	Medium Density Highway Commercial under the Bedford Highway Secondary Plan Area, Halifax Municipal Planning Strategy (MPS) (Map 1)
<b>Zoning (Map 2)</b>	C-2B (Highway Commercial) Zone under the Halifax Mainland Land Use By-law (LUB) (Map 2)
<b>Size of Site</b>	Approximately 5,830.69 square metres (62,761 square feet) in area
<b>Street Frontage</b>	Approximately 31.33 metres (102.80 feet) of street frontage on Bedford Highway
<b>Current Land Use(s)</b>	Vacant
<b>Surrounding Use(s)</b>	The surrounding area includes a mix of commercial and residential uses: <ul style="list-style-type: none"><li>• Abutting the subject property to the south is The Bluenose Inn;</li><li>• Across the street to the east is the Terrace, a 4 and 5 storey mixed commercial and residential development;</li><li>• To the north east of the site are existing single unit dwellings; and</li><li>• To the west and south are multiple unit dwellings with heights ranging between 4 to 6 storeys.</li></ul>

### **Proposal Details**

The developer has requested that the dates of commencement and completion for the project be extended by three years citing changes in local market conditions.

The extended timeframe would require the developer to obtain construction permits by March 17, 2020, rather than 2017 as required under the existing agreement. The requested amendments would also result in the entire project being required to be completed by March 17, 2022, eight years from the date of registration of the existing development agreement.

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision to grant a non-substantive amendment is made by resolution of Community Council. In the event Community Council approves the proposed amending development agreement, a notice will be placed in the local newspaper setting out the right to appeal.

The proposal will potentially impact local residents and property owners.

## **DISCUSSION**

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS.

The existing development agreement is enabled through Section 8, Policy 1.8 of the Bedford Highway Secondary Planning Strategy (Attachment B). This policy allows for the consideration of developments over 10.67 metres (35 feet) in height through development agreement. The matter of a time extension is listed as a non-substantive amendment in Section 6.1 of the Existing Agreement, and can be considered by resolution of Community Council.

The existing development agreement contains certain deadlines to encourage the timely development and completion of the project. One of the reasons that development agreements contain commencement and completion dates is so that projects which have been approved, but not constructed, can be considered by Council if circumstances change. This may include changes to a site or its surroundings or approved amendments to MPS policies that enable such development. This is not the case in this situation and as the policies which provide for this development site continue to exist, staff supports an extension to the required construction commencement date.

Should Community Council grant the extension, all development rights and requirements under the existing agreement will remain in effect, but would extend the date of commencement until March 17, 2020. If the request for a time extension is denied, a development permit cannot be issued after March 17, 2017 as the Land Use Bylaw would not permit as-of-right development on the site for the proposed use. Therefore if the existing development agreement expires, a new agreement would need to be negotiated pursuant to Policy 1.8.

### **Proposed Amending Development Agreement**

Attachment A contains the proposed amending development agreement for the subject site and the conditions under which the development may occur. The proposed development agreement would provide a three-year extension to the permitted commencement of the development, as well as extend the completion date by three years.

### **Conclusion**

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. The request for a three-year extension to the dates of commencement and completion is reasonable. 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 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 amending development agreement are contained within the Discussion section of this report.

## **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

## **ALTERNATIVES**

1. North West Community Council may choose to approve the proposed development agreement amendment subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report. A decision of Council to approve this development 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 development agreement amendment, and in doing so, must provide reasons why the proposed amendments do not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed 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
Attachment A:	Proposed Amending Agreement
Attachment B:	Applicable Policies from the Bedford Highway Secondary Planning Strategy
Attachment C:	Relevant Sections of the Existing Development Agreement

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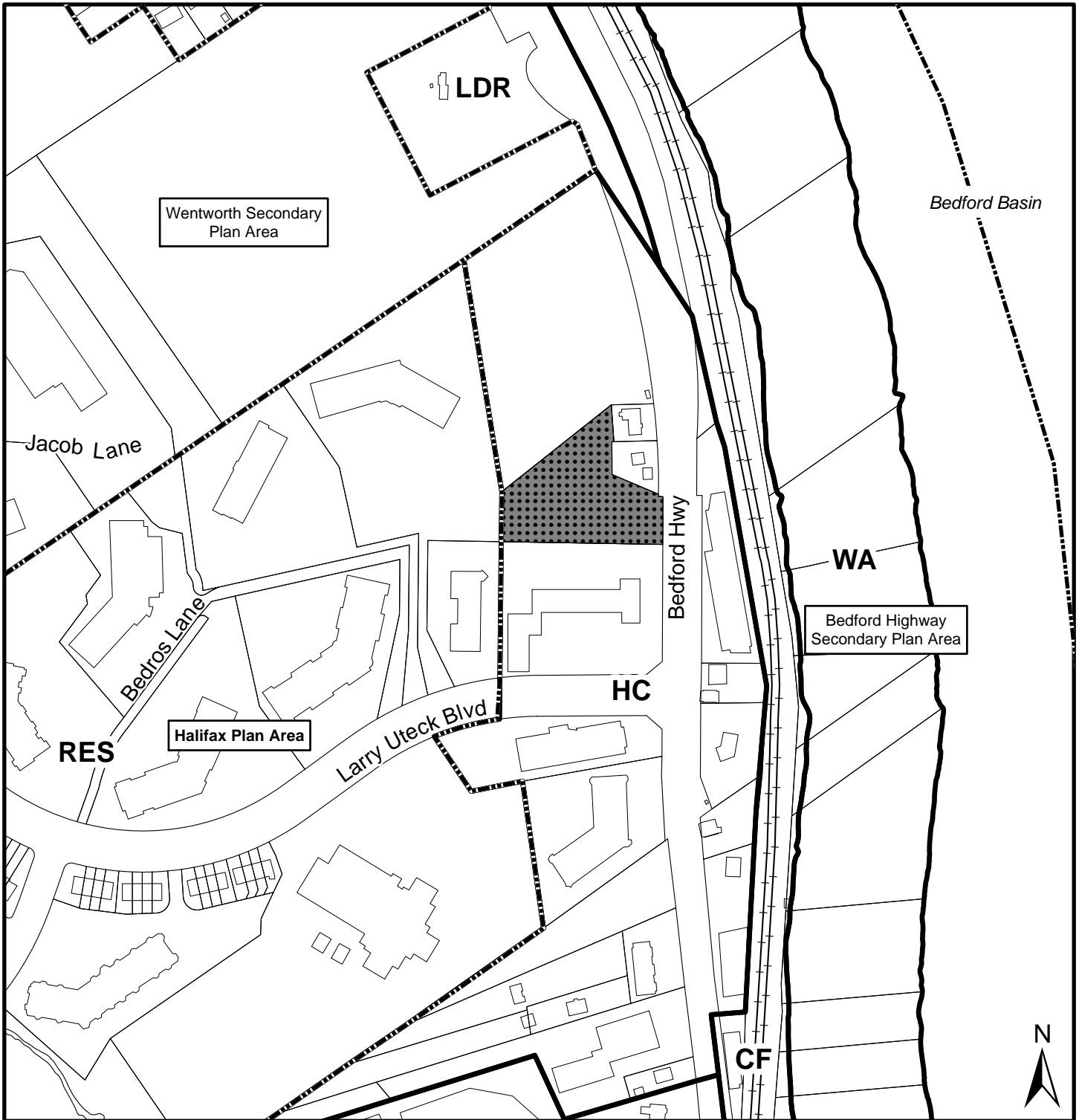
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Nathan Hall, Planning Intern, 902.490.4726

ORIGINAL SIGNED

Report Approved by: \_\_\_\_\_  
Kelly Denty, Manager, Current Planning, 902.490.4800


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**Map 1 - Generalized Future Land Use**

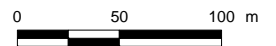
**HALIFAX**

644 Bedford Highway  
Halifax

 Area of proposed development agreement

**Designation - Halifax**

RES Residential Environments  
WA Water Access



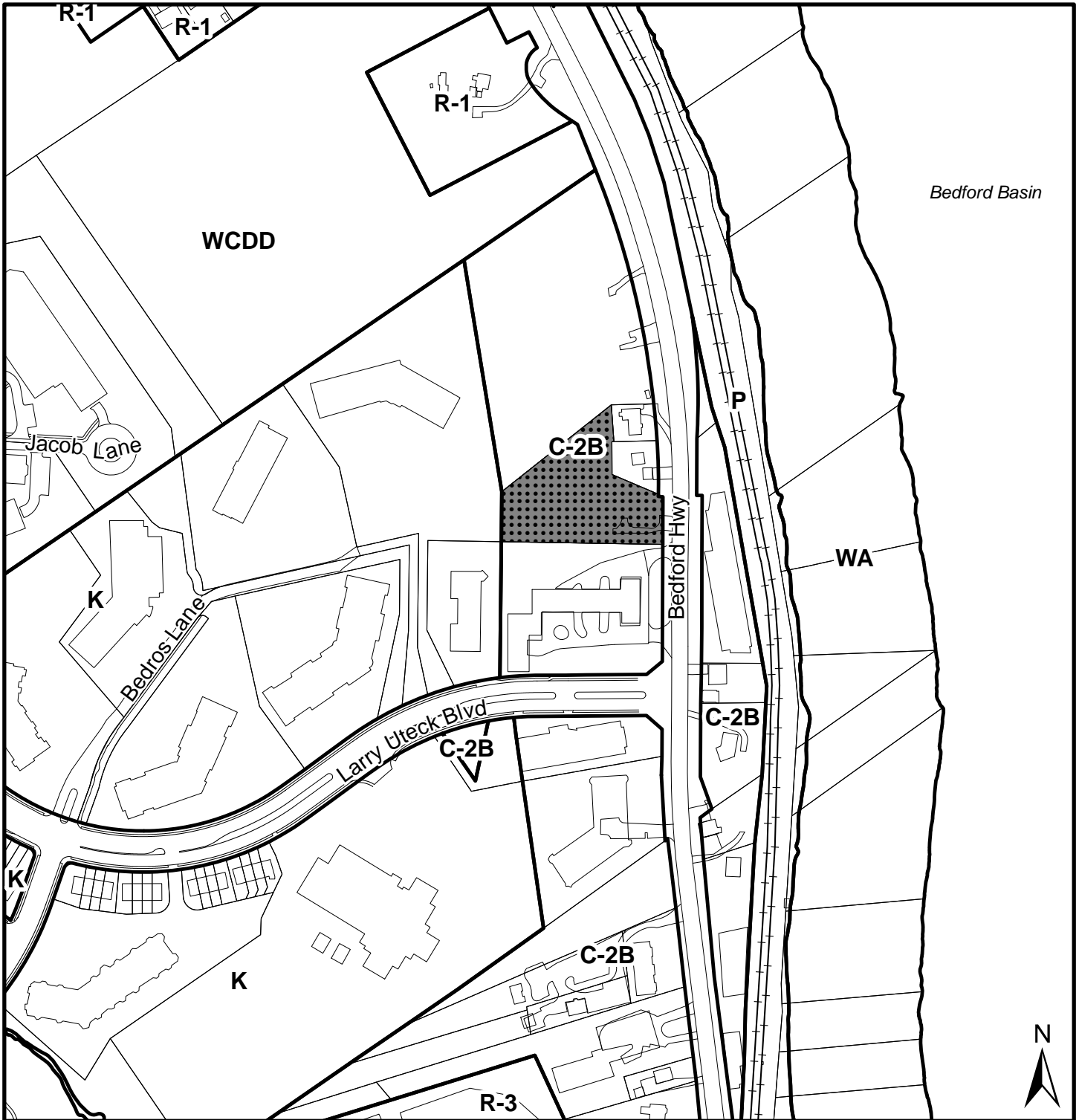
Halifax Plan Area  
Bedford Highway Secondary Plan Area

**Designation - Bedford Highway**

LDR Low Density Residential  
HDR High Density Residential  
HC Highway Commercial  
CF Community Facilities


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**

644 Bedford Highway  
Halifax

 Area of proposed development agreement

<b>Zone</b>	
R-1	Single Family Dwelling
R-3	Low-Rise Apartment
C-2B	Highway Commercial
WCDD	Wentworth Comprehensive Dev. District
WA	Water Access
K	Schedule K

Halifax Mainland  
Land Use By-Law Area

**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.



**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:

\_\_\_\_\_

=====

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

\_\_\_\_\_

\_\_\_\_\_

**1054555 NOVA SCOTIA LIMITED**

Per: \_\_\_\_\_

=====

**HALIFAX REGIONAL MUNICIPALITY**

Per: \_\_\_\_\_

Mayor

Per: \_\_\_\_\_

Municipal Clerk



**Attachment B**  
**Applicable Policies of the Bedford Highway Secondary Planning Strategy**

- 1.8 In order to promote investment in mixed use redevelopment within two specific nodes along the Bedford Highway, that being at the north end of the Halifax plan area and adjacent the intersection of the Bedford Highway and Larry Uteck Boulevard, and to prevent conflict between new and existing uses the Municipality may, through the land use by-law, identify areas that provide an opportunity for and will benefit from a mix of residential and commercial uses. In those areas identified in the land use by-law as Schedule "R", all mixed residential/commercial developments or residential developments that exceed 35 feet in height shall be considered by development agreement in accordance with Sections 242 to 245 and 249 of the Halifax Regional Municipality Charter and as illustrated on Map ZM-2. (RC-Jan 11/11; E-Mar 12/11)
- 1.8.1 In considering land use by-law amendments to allow inclusion of a specific property within Schedule "R", the lands must be within the Bedford Highway Secondary Plan area, designated Highway Commercial, zoned C-2B (Highway Commercial Zone) and be immediately adjacent to lands currently identified in the land use by-law as Schedule "R". (RC-Jan 11/11; E-Mar 12/11)
- 1.8.2 In considering development agreements pursuant to Policy 1.8, Council shall consider the following:
- a) the relationship of new development to adjacent properties and uses; and, the mitigation of impacts on the amenity, convenience and development potential of adjacent properties through effective urban design and landscape treatment;
  - b) direct access to and sufficient frontage on Bedford Highway;
  - c) the architectural design of the building(s) including high quality building materials, articulation of and variation to the building(s) facades; and fine-grained architectural detailing;
  - d) the scale of the building(s) having regard for the retention of views of the Bedford Basin from public spaces including streets, and active transportation corridors;
  - e) safe vehicular and pedestrian access to the site and building(s);
  - f) the adequacy of vehicle and bicycle parking facilities;
  - g) the location of the majority of the vehicular parking below or to the side or rear of the building(s) with a minimal amount of parking accommodated in the front of the building(s) only where appropriate landscape measures along the street edge are provided;
  - h) the provision of both interior and exterior amenity areas and open space of a high quality, of a size and type adequate for the active and passive use of the residents;
  - i) the adequacy of the servicing capacity of the site;
  - j) the provision of appropriate buffering and landscape treatment;
  - k) the potential impact of shadowing on surrounding residential buildings beyond what currently exists;
  - l) demonstrated incorporation of Crime Prevention Through Environmental Design (CPTED) principles in the site and building design; and
  - m) the provision of active transportation linkages, where needed. (RC-Jan 11/11; E-Mar 12/11)

**Attachment C**  
**Relevant Sections of the Existing Development Agreement**

**PART 6: AMENDMENTS**

**6.1 Non-Substantive Amendments**

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

- (a) Minor changes to the placement and architectural design of the building as outlined in Section 3.4 including changes in cladding material;
- (b) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement; and
- (c) The length of time for the completion of the development as identified in Section 7.5 of this Agreement.

**PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

**7.1 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.

**7.3 Commencement of Development**

7.3.1 In the event that development on the Lands has not commenced within three (3) 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.

7.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Construction Permit.

7.3.3 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 sixty (60) calendar days prior to the expiry of the commencement of development time period.

**7.4. Completion of Development**

Upon the completion of the whole development or complete phases of the 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 Halifax Mainland, as may be amended from time to time.

## **7.5 Discharge of Agreement**

If the Developer fails to complete the development after five (5) 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.