



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 13.1.2
Halifax and West Community Council
November 14, 2018

TO: Chair and Members of Halifax and West Community Council

-Original Signed-

SUBMITTED BY:

Kelly Denty, Director of Planning and Development

-Original Signed-

Jacques Dubé, Chief Administrative Officer

DATE: September 25, 2018

SUBJECT: **Case 21847: Time Extension to existing Development Agreement for PID 40306730, property adjacent to 1300 Prospect Road, Goodwood**

ORIGIN

Application by Jack Bryant

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give notice of motion to consider the proposed amending development agreement, as set out in Attachment A, to permit a four-year extension to the deadline for commencement of development and a five (5) year time extension for development completion for lands at PID 40306730, Prospect Road, Goodwood and schedule a public hearing;
2. Approve the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the 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

Jack Bryant, on behalf of 3232975 Nova Scotia Ltd., is applying to amend an existing development agreement to permit a four-year extension to the deadline for commencement of development and a five (5) year extension to the deadline for completion of development at PID 40306730, Prospect Road.

Subject Site	PID 40306730, Prospect Road, Goodwood
Location	Adjacent to 1300 Prospect Road, just south of Old Coach Road, Goodwood
Regional Plan Designation	RC (Rural Commuter)
Community Plan Designation (Map 1)	RB (Residential B) under the Planning District 4 (Prospect) Municipal Planning Strategy (MPS)
Zoning (Map 2)	CR-1 (Commercial Recreation 1) Zone under the Planning District 4 (Prospect) Land Use Bylaw (LUB)
Size of Site	14 hectares (34.6 acres)
Street Frontage	129 metres (423.31 feet)
Current Land Use(s)	Vacant
Surrounding Use(s)	A mixture of land uses exists in the area, including: <ul style="list-style-type: none">• Commercial recreation (golf course and driving range)• Single unit dwellings• HRM Parkland

Original Approval

On June 4, 2014, Community Council approved a development agreement for 2 single-storey commercial buildings on a vacant property located immediately south of 1300 Prospect Road, Goodwood. The development agreement permits one building (364 square metres) as a drive-thru restaurant and service station, while the other building (932 square metres) is commercial leasehold space. Section 7.3.1 of the development agreement stipulates that construction must commence within four (4) years from the date of registration, establishing a commencement date of August 26, 2018. Section 7.4.1 requires development to be completed five (5) years from the date of registration, establishing a completion of development date of August 26, 2019.

Proposal Details

The applicant proposes to amend the existing development agreement to allow a 4-year time extension for construction commencement and a five (5) year time extension for development completion. The applicant has indicated that the previous potential buyer of the subject site was no longer able to complete the contract as committed. An extension to the commencement and completion of development deadlines will allow a newly interested party to fulfill the terms of the development agreement.

Enabling Policy Context

Policy RB-10 of the MPS enables Council to consider general business zone uses (C-2 Zone uses) and service stations through the development agreement process. This is the policy framework under which the existing agreement was considered and approved in 2014. These policies remain unchanged today and continue to apply to the request for an amendment to the existing agreement.

Section 7.3.3 and 7.4.3 of the existing development agreement state that Council may consider granting an extension of the commencement and completion of development time period as a non-substantive amendment, however the developer is required to submit a written request to the Municipality at least sixty (60) calendar days prior to the expiry of the commencement of the respective time period. This application was not received sixty (60) days prior to the expiry of the commencement of development time period, therefore a substantive amendment is required for both time extensions.

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, signage posted on the subject site, and postcards mailed to property owners within the notification area (Map 2). No comments or concerns were raised by the public.

A public hearing must be held by Halifax and West Community Council before they can consider approval of the proposed amending development agreement. Should 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 shown on Map 2 will be notified of the hearing by regular mail.

DISCUSSION

Original Review Process

On June 4, 2014, when the original application (Case 18107) was before Community Council, staff recommended approval of the proposal. The rationale for this recommendation was based on the development agreement adhering to applicable MPS policy. Policy required the development agreement to adequately address controls for architectural features of the buildings, on-site services, site access, Prospect Road upgrades, and the protection of wetlands on the subject property. Community Council concluded the development was reasonably consistent with the intent of the Municipal Planning Strategy, and approved the development agreement.

Timing Obligations

Development agreements have mandatory commencement and completion dates to allow Council and property owners the opportunity to re-evaluate the agreement within a specified amount of time after its initial approval. This process allows Council to reconsider a project in the context of changes in development policies that may have taken place since the original approval. Furthermore, even if relevant policies may not have changed in that time frame, the context within which those policies are applied may have changed because of alterations to the surrounding neighbourhoods or market conditions.

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 proposed development agreement amendment relates only to the commencement and completion of development dates, and the proposed development itself remains unchanged. Furthermore, the Municipal Planning Strategy policy that enabled the development agreement has gone unchanged in the time since its agreement was first approved. The previously referenced land exchange deal which was ultimately unrealized also makes it reasonable to extend the existing development rights, and 4-years is a reasonable extension under the circumstances. Therefore, staff recommend that the Halifax and West Community Council approve the proposed 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 to satisfy the terms of this proposed development agreement. The administration of the proposed amending development agreement can be carried out within the approved 2018-2019 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. Halifax and West Community Council may choose to approve the proposed amending development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this amending development 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 development 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 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 Area

Attachment A: Proposed Amending Development Agreement

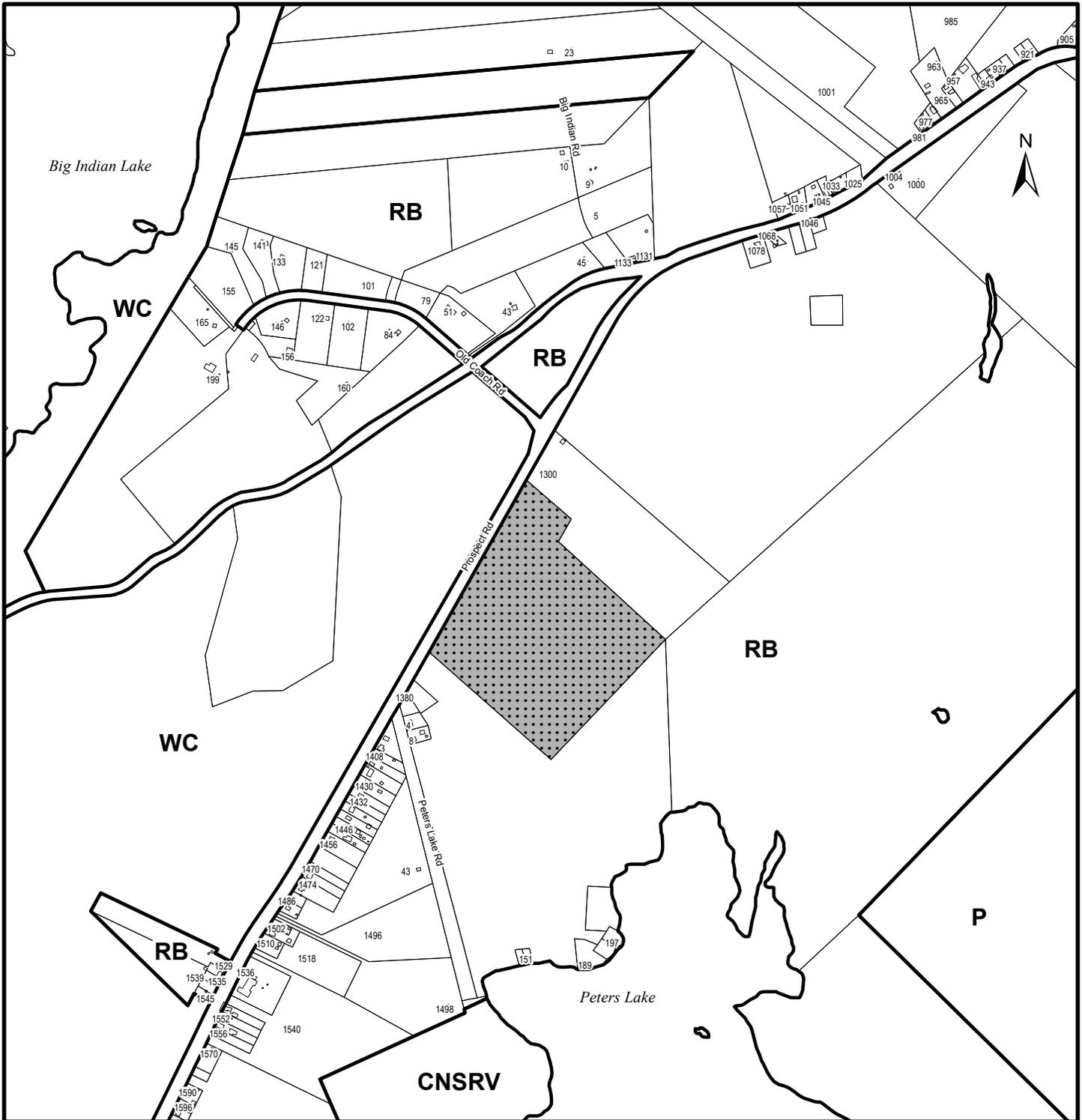
Case 18107 Staff Report:
<http://legacycontent.halifax.ca/Commcoun/west/documents/140604hwcc812.pdf>

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: Megan Backos, Planner II, Current Planning, 902.490.7092

-Original Signed-

Report Approved by: _____
Steven Higgins, Manager Current Planning, 902.490.4382



Map 1 - Generalized Future Land Use

HALIFAX

Prospect Road
Goodwood

 Subject Property

Planning District 4 (Prospect) Designations

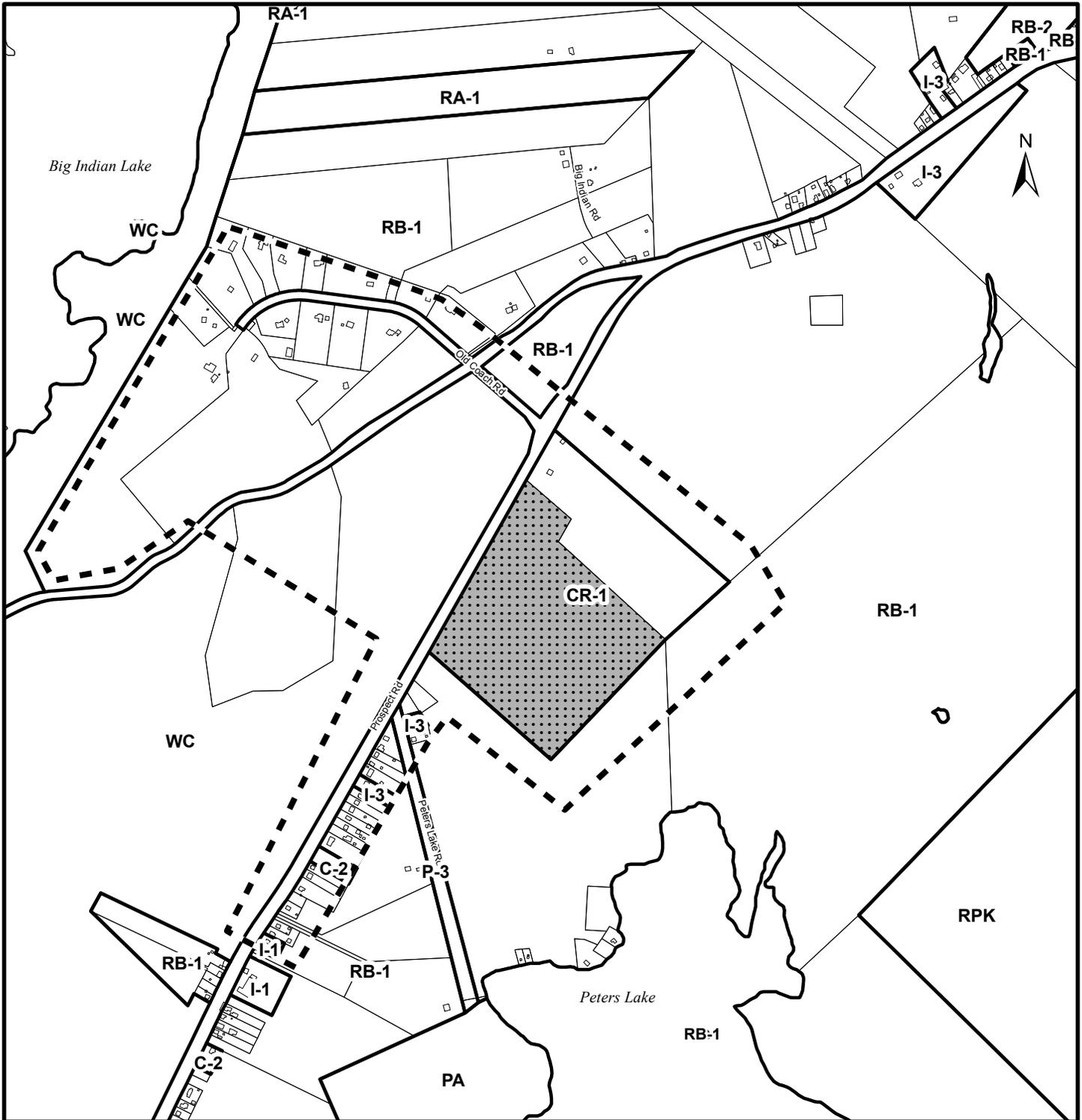
- RB Residential B
- WC Western Common
- CNSRV Conservation



Planning District 4
(Prospect) Land Use By-Law Area

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 Notification

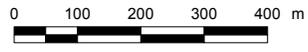


Prospect Road
Goodwood

 Subject Property

Planning District 4 (Prospect) Zones

- RA-1 Residential A-1
- RB-1 Residential B-1
- RB-2 Residential B-2
- C-2 General Business
- CR-1 Commercial Recreation 1
- P-3 Conservation
- PA Protected Area
- RPK Regional Park
- I-1 Light Industry
- I-3 Local Service
- WC Western Common



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.

Planning District 4
(Prospect) Land Use By-Law Area

**Attachment A
Proposed Amending Development Agreement**

THIS FIRST AMENDING DEVELOPMENT AGREEMENT made this day of **[Insert Month]**,
20__,

BETWEEN:

3232975 NOVA SCOTIA LIMITED
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 40306730 on the Prospect Road in Goodwood, 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 a service station and commercial uses on the Lands on June 4, 2014 (Municipal Case Number 18107), and which said development agreement was registered at the Land Registration Office on August 26, 2014 as Document Number 105672597 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested to amend the Original Agreement to allow for a four (4) year time extension to the date of commencement of development and a five (5) year time extension to the date of completion of development pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 6.2 of the Original 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 21847;

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 First Amending Development Agreement, all other conditions and provisions of the Original Agreement as amended 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 First Amending Development Agreement, and the Original Agreement.

3. Subsection 7.3.1 of the Original Agreement shall be amended by deleting text shown in strikeout and inserting the text in bold, as shown as follows:

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

4. Subsection 7.4.1 of the Original Agreement shall be amended by deleting text shown in strikeout and inserting the text shown in bold, as shown as follows:

7.4.1 If the Developer fails to complete the development after five (5) years from the date of registration of ~~this~~ **the 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 the 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 company 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 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