



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

Item No. 13.1.2
Harbour East – Marine Drive Community Council
October 3, 2019

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

Original Signed

SUBMITTED BY:

Kelly Denty, Director of Planning and Development

DATE: August 14, 2019

SUBJECT: **Case 22490: Non-substantive amendments to an existing development agreement for 181 Pleasant Street, Dartmouth**

ORIGIN

Application by Toucan Industries Limited.

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 the proposed amending development agreement, as set out in Attachment A of this report, to allow a non-substantive amendment to an existing development agreement extending the commencement and completion dates for the building construction;
2. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
3. Require the amending 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

Toucan Industries Ltd. is applying for a non-substantive amendment to an existing development agreement for 181 Pleasant Street, Dartmouth, to extend the date of commencement of construction by one year and the date of completion by four years from the date the amending agreement is registered.

Subject Site	A single property at 181 Pleasant Street, Dartmouth
Location	At the southeast corner of Pleasant Street and Southdale Street
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	(COM) Commercial under the Dartmouth Municipal Planning Strategy (MPS)
Zoning (Map 2)	C-2 (General Business) zone under the Dartmouth Land Use By-law (LUB)
Size of Site	1,380 square metres (14,852 square feet) in area
Street Frontage	55 metres (180.25 feet) of frontage on Pleasant Street; and 35.8 metres (117.5 feet) of frontage on Southdale Street.
Site Conditions	Gently sloping with grass and gravel surface.
Current Land Use(s)	Former service station and car wash site, now vacant.
Surrounding Land Use(s)	The surrounding area is comprised of commercial and residential uses. Surrounding land uses include: <ul style="list-style-type: none">• To the east – a mixed use building with ground floor commercial and 3 apartment units and parking for 9 cars;• To the west – low density housing on the opposite side of Pleasant Street;• To the south – a building containing a restaurant (now closed) and apartment, a medical clinic with a single apartment, a single unit dwelling and a strip mall; and• To the north – single unit dwellings on the opposite side of Southdale Street.

Existing Development Agreement

On November 10, 2016, Harbour East Community Council approved a development agreement (case number 19528) to construct a 6-storey, 53 unit dwelling on a vacant property at 181 Pleasant Street (“existing development agreement”). The existing development agreement requires commencement of construction within three years and completion within six years from the date of registration of the agreement with the Land Registration Office. The existing development agreement was registered on February 28, 2017.

Section 6.2 of the existing development agreement identifies changes to the dates of commencement and completion as non-substantive amendments. Section 7.3.3 allows Council to consider an extension for commencement, if the Municipality receives a written request from the Developer at least 60 calendar days before the current commencement deadline. An application to extend the existing dates was received within this required timeframe.

Proposal Details

The applicant proposes to extend the mandatory commencement of construction date by one year and the mandatory completion date by four years, both referenced from the date the amending development agreement is registered with the Land Registration Office.

Enabling Policy and LUB Context

Dartmouth MPS Policy IP-5 requires a development agreement for any new apartment buildings in the C-2 (General Business) Zone. Policy IP-1(c) sets out zones, permitted uses and development standards, and factors to consider for zoning amendments. Policy G-15 of the Regional MPS provides additional criteria for development agreements. This is the policy framework under which the existing development agreement

was considered and approved in 2009. These policies have not materially changed since that time and they continue to apply to the request for an amendment to the existing 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 a non-substantive amendment to a development agreement. The decision on the amendment is made by resolution of Community Council.

DISCUSSION

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

Proposed Amending Development Agreement

Attachment A contains the proposed amending agreement for the subject site. The agreement allows no change to the development as originally approved, other than an extension to the commencement and completion dates by one and four years, respectively.

The proposed time extensions can be considered by Community Council as non-substantive amendments as provided for in section 6.2 (c) in the original development agreement. The enabling policies IP-1(c) and IP-5 of the Dartmouth MPS, have not changed since the application was originally approved. Therefore, the proposal remains consistent with those specific policies and the MPS at large.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that it is reasonably consistent with the intent of the MPS. The proposed amendment is only to the dates of commencement and completion. The architecture, placement and use of the structure is unchanged from that which is set out in the existing development agreement. Therefore, staff recommend that the Harbour East – Marine Drive Community Council approve the proposed First Amending 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 2019-2020 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. Harbour East-Marine Drive 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 development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East – Marine Drive 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 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

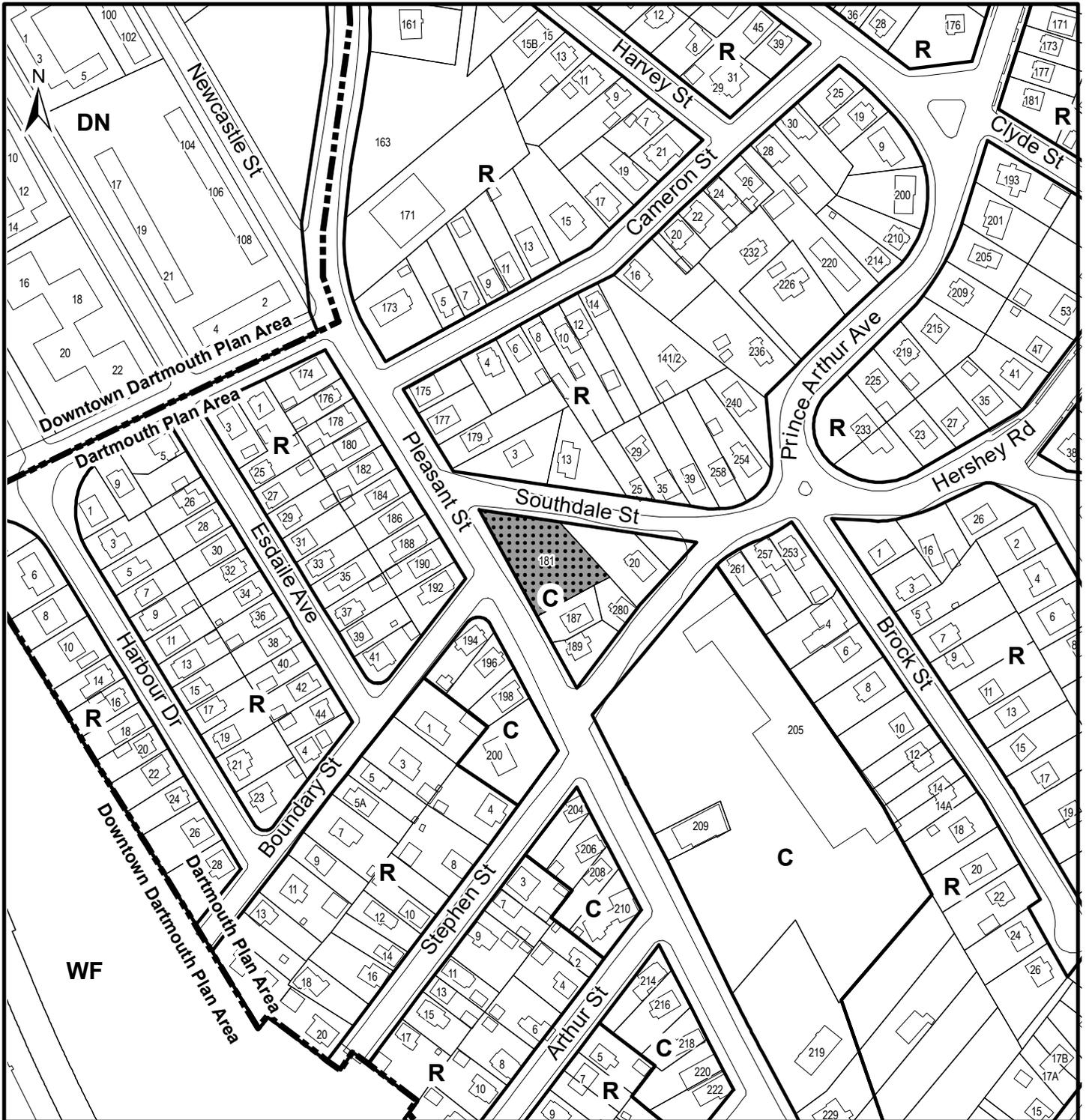
Attachment A: Proposed Development Agreement

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: Jamy-Ellen Klenavic, Planner II, 902.490.2665
Anne Totten, Planner II, 902-490-4919

Report Approved by: Original Signed

Steven Higgins, Manager Current Planning, 902.490.4382



Map 1 - Generalized Future Land Use

181 Pleasant Street
Dartmouth

 Subject Property

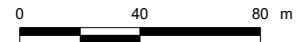
Dartmouth Designation

- C Commercial
- R Residential

Downtown Dartmouth Designation

- DN Downtown Neighbourhood
- WF Waterfront

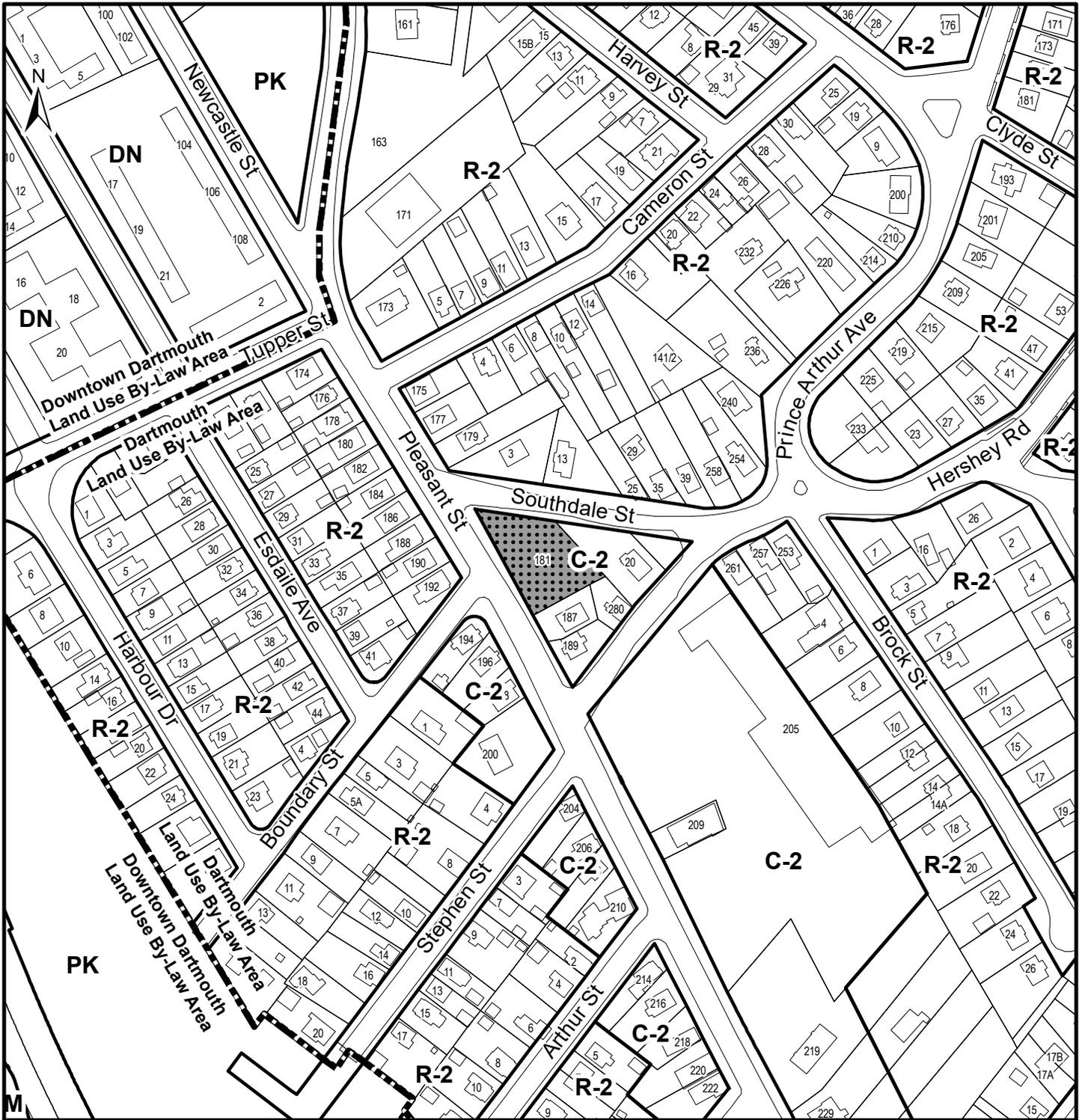
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This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Dartmouth
Plan Area



Map 2 - Zoning

181 Pleasant Street
Dartmouth

 Subject Property

Dartmouth
Land Use By-Law Area

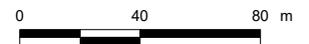
Dartmouth Zone

- C-2 General Business
- R-2 Two Family Residential

Downtown Dartmouth Zone

- DN Downtown Neighbourhood
- M Marine Business
- PK Park and Open Space

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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.

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

BETWEEN:

TOUCAN INDUSTRIES LTD.,

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 181 Pleasant Street, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Harbour East-Marine Drive Community Council of the Municipality approved an application to enter into a Development Agreement to allow for a multiple unit residential building on the Lands (Municipal Case Number 19528), pursuant to Policy IP-5 of the Dartmouth Municipal Planning Strategy, at a meeting held on November 10, 2016, which said Development Agreement was registered at the Land Registration Office on February 28, 2017 as Document Number 110388486 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested that further amendments to the Original Agreement to allow for a one-year extension to the Date of Commencement and a four-year extension to the Date of Completion on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter*, pursuant to Policy IP-5 of the Dartmouth Municipal Planning Strategy, and pursuant to Section 6.2 of the Original Agreement;

AND WHEREAS the Harbour East-Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 22490;

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 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 Agreement, and the Original Agreement.

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

7.3.1 In the event that development on the Lands has not commenced within ~~three (3)~~ **one (1)** years from the date of registration of this **First Amending** Agreement at the Registry of Deeds or Land Registration 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. Section 7.5.1 of the Original Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

7.5.1 If the Developer fails to complete the development after ~~six (6)~~ **four (4)** years from the date of registration of this **First Amending** Agreement at the 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 Registered Owner Name)

Witness

Per: _____

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

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20____, before me, personally came and appeared _____, the 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 their 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, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly 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 their presence.

A Commissioner of the Supreme Court
of Nova Scotia