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Item No. 13.1.2
Harbour East – Marine Drive Community Council
October 3, 2019
November 14, 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 23, 2019

SUBJECT: **Case 22463: Non-substantive amendments to an existing development agreement for 249, 251 and 257 Windmill Road, Dartmouth**

ORIGIN

Application by W.M. Apartments Limited for a non-substantive amendment to an existing development agreement for lands at 249 to 251 and 257 Windmill Road, Dartmouth (PIDS 40811085, 41086018, and 40175887).

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

W. M. Apartments is applying for a non-substantive amendment to an existing development agreement on the subject site to extend the date of commencement of construction to 3 years and the date of completion to 6 years from the date the amending agreement is registered.

Subject Site	249, 251 and 257 Windmill Road, Dartmouth (PIDs, 40811085, 41086018 and 40175887)
Location	Southwest of Windmill Road, between Nivens Avenue and Grove Street
Regional Plan Designation	HARB (Harbour) and US (Urban Settlement)
Community Plan Designation (Map 1)	R (Residential)
Zoning (Map 2)	R-4 (Multiple Family Residential) and C-2 (General Business) (Split Zoning)
Size of Site	8093.7 m ² (87120 ft ²) (PID 41086018) 16430.2 m ² (176853.6 ft ²) (249, 251 and 257 Windmill Road)
Street Frontage	Approximately 30.5 metres (100 feet) (PID 41086018) Approximately 15 metres (49 feet) + 15.5 metres (51 feet) (249, 251 and 257 Windmill Road) The subject site has three separate frontages on Windmill Road.
Current Land Use(s)	Vacant/surface parking (PID 41086018) 3-storey, 207-unit dwelling (249, 251 and 257 Windmill Road)
Surrounding Use(s)	Subject site abuts active rail line. Multi-unit dwellings, one and two-unit dwellings, commercial uses

Existing Development Agreement

On September 10, 2009, Harbour East Community Council approved a development agreement to construct a 12-storey, 103 unit dwelling on property with PID No. 41086018 (the “existing development agreement”). The existing development agreement also required some changes to the existing multi-unit dwellings at 249, 251 and 257 Windmill Road. Construction of the new 12-storey multi-unit dwelling has not commenced and the existing development agreement expired on January 21, 2015.

Section 6.2 © of the existing development agreement identifies changes to the dates of commencement and completion as non-substantive amendments.

Proposal Details

The applicant proposes to extend the mandatory date of commencement of construction by 3 years and the mandatory date of completion by 6 years, both from the date the proposed First Amending Development Agreement is registered with the Land Registration Office.

Enabling Policy and LUB Context

Dartmouth MPS Policies IP-1© and IP-5 of the Dartmouth MPS require a development agreement for any new apartment buildings in the C-2 (General Business) and R-4 (Multiple Family Residential) Zones. 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 changed since the original approval and they continue to apply to the request for an amendment to the existing development agreement.

A portion of the site is within the ‘Halifax Harbour’ designation and abuts an active rail line. RMPS Policy EC-14 states that when considering an amendment to secondary planning strategies, land use by-laws or development agreements to permit new residential development in proximity to harbor related industrial uses, consideration shall be given to the potential for nuisances and compatibility issues and the importance

to HRM in protecting the viability of the marine related industrial uses. This policy framework was in place and was accommodated during the approval process of the original 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 Development Agreement

Attachment A contains the proposed amending agreement for the subject site. The agreement proposes no changes to the project as originally approved, other than an extension to the commencement and completion dates by three and six years, from the date of registration of the amending development agreement, respectively.

The proposed time extensions can be considered a non-substantive amendment as provided for in section 6.2 © in the original development agreement. The enabling policies IP-1© 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.

RMPS policy EC-14 allows new residential development in the Harbour designation as long as consideration is given to the potential for compatibility and nuisance issues. At the time of the original application, the Halifax Harbour Planning Committee, with membership from HRM, the Port and DND, was consulted and they had no concerns about the proposed residential use impacting harbour uses. No part of the development will be on the harbour side of the rail line, thereby minimizing land use conflicts.

CN was contacted as part of the original application and a chain link fence was required in the development agreement to prevent access to the rail line. Staff contacted CN regarding the current request for time extensions and, while some of CN's internal guidelines have changed since the original approval, they have indicated no additional mandatory requirements are needed to accommodate the proposed changes to the project commencement and completion dates.

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 approved by 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 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 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

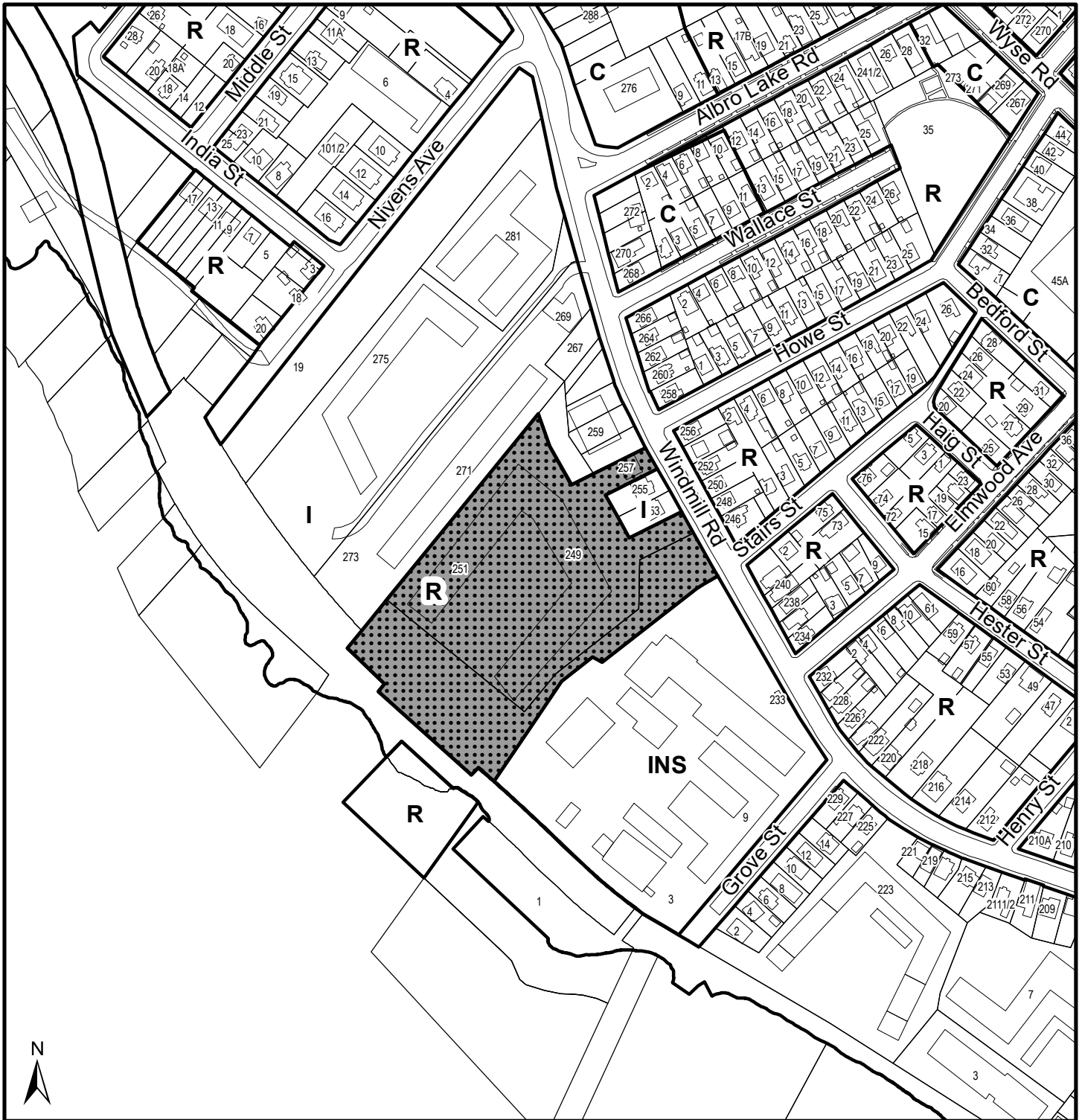
Attachment A: Proposed Development Agreement

A copy of this report can be obtained online at dalifax.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

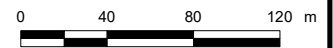
PIDs: 40811085, 41086018
 249, 251, 257 Windmill Road
 Dartmouth

HALIFAX

 Subject Properties

Designation

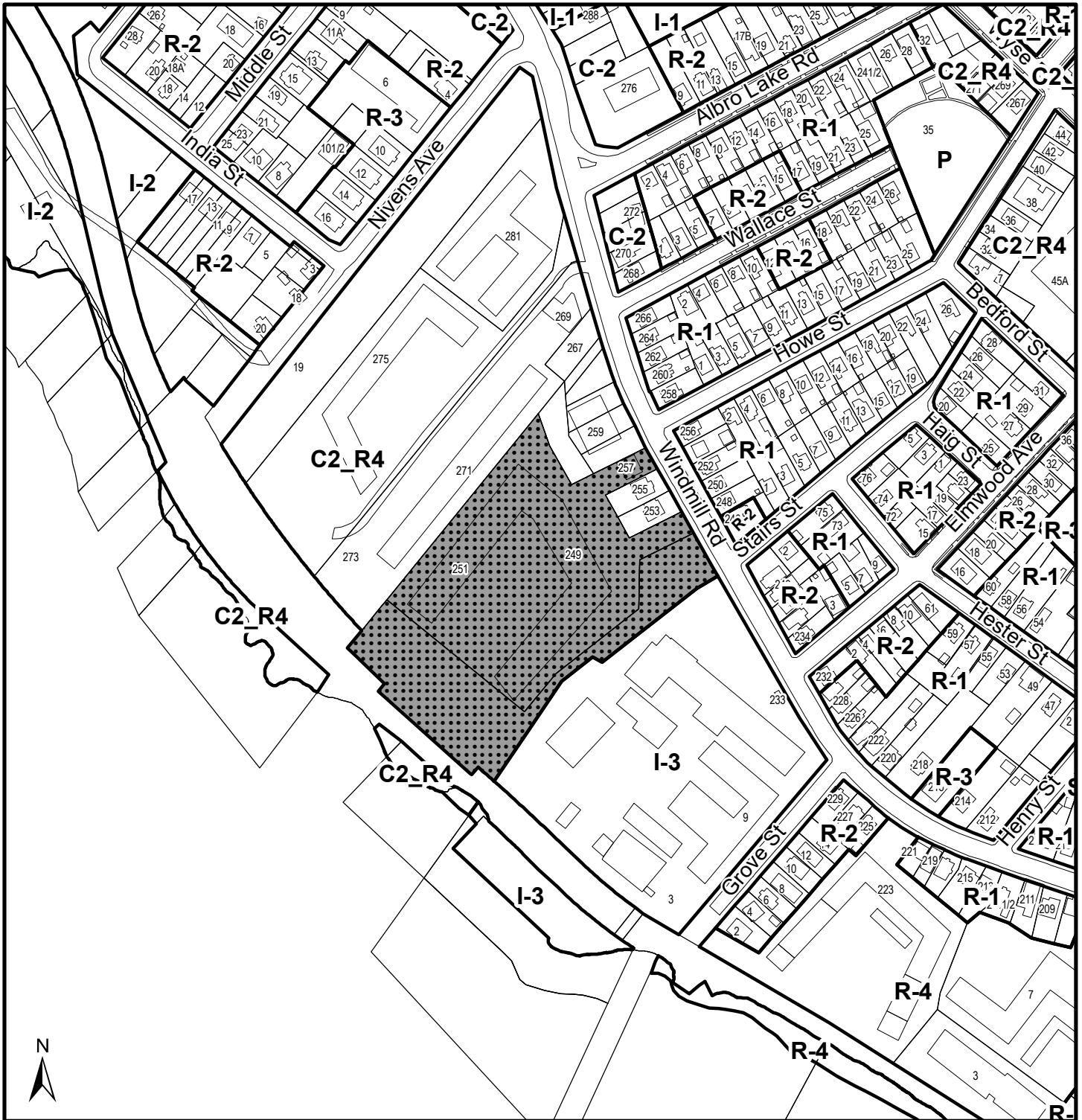
- C Commercial
- I Industrial
- INS Institutional
- R Residential



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

PIDs: 40811085, 41086018
 249, 251, 257 Windmill Road
 Dartmouth

 Subject Properties

Zone	
C-2	General Business
C2_R4	General Business, Multiple Family Residential
I-1	Light Industrial
I-2	General Industrial
I-3	Harbour-Oriented Industrial
P	Park
R-1	Single Family Residential
R-2	Two Family Residential
R-3	Multiple Family Residential (Medium Density)
R-4	Multiple Family Residential (High Density)
S	Institutional



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.

Dartmouth
 Land Use By-Law Area

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

BETWEEN:

W.M. APARTMENTS 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 249, 251 and 257 Windmill Road, Dartmouth (PIDs 40811085, 41086018, and 40175887), 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 new 12-storey, 103 unit apartment building and recognize an existing 3-storey, 207 unit residential building and an existing two-unit building on the Lands (Municipal Case Number 01230), pursuant to Policy IP-5 of the Dartmouth Municipal Planning Strategy, at a meeting held on September 10, 2009, which said Development Agreement was registered at the Land Registration Office on January 21, 2010 as Document Number 95153384 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested amendments to the Original Agreement to allow for a three-year extension to the Date of Commencement and a six-year extension to the Date of Completion on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter*, 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 22463;

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

8.3 In the event that construction on the Lands has not commenced within ~~five (5)~~ **three (3)** years from the date of registration of this **First Amending** Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon the Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

4. Section 8.3.1 of the Original Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

8.3.1 If the Developer fails to complete the development, or after ~~ten (10)~~ **six (6)** years from the date of registration of this **First Amending** Agreement with 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; 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 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, 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 his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia