



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

Item No. 13.1.3
Harbour East – Marine Drive Community Council
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: October 11, 2019

SUBJECT: **Case 22512: Non-substantive amendments to an existing development agreement for Evergreen Drive, Cole Harbour**

ORIGIN

Application by Lambie Construction Inc.

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 date 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 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

Lambie Construction Inc. is applying for a non-substantive amendment to an existing development agreement for vacant lands abutting Evergreen Drive, Cole Harbour, to extend the date of commencement of construction by one year from the date the amending agreement is registered.

Subject Site	Evergreen Drive, Cole Harbour (PIDs 00398552 and 40414633)
Location	East of Hugh Allen Drive
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Urban Residential (UR) in the Cole Harbour-Westphal Municipal Planning Strategy (MPS)
Zoning (Map 2)	Single Unit Dwelling (R-1) in the Cole Harbour-Westphal Land Use By-law (LUB)
Size of Site	5,639.5 square metres (60,705 square feet) in area
Street Frontage	38.84 metres (127.43 feet)
Site Conditions	Tree covered with slight negative slope to east
Current Land Use(s)	Vacant
Surrounding Land Use(s)	The surrounding land uses are comprised mainly of residential, commercial and institutional uses: <ul style="list-style-type: none">• South – low density residential dwellings• East - retail store and the Cole Harbour Shopping Centre• North - Church, residential care facility, Junior High School• West – low density residential development

Existing Development Agreement

On November 6, 2008, Harbour East Community Council approved a development agreement (case number 01145) to construct 16 townhouses on an unconstructed section of Evergreen Drive, to be accessed by a shared private driveway (“existing development agreement”). The report and site design plans may be found at <http://legacycontent.halifax.ca/commcoun/hecc/documents/Case01145.pdf>

The original development agreement required commencement of construction within five years from the date of registration of the agreement in the Land Registration Office. Registration occurred on March 31, 2009, creating a mandatory commencement date of March 31, 2014.

First Amending Agreement: Construction did not commence by the required date. In 2014 the developer requested an application to extend the date of commencement by two years (case 19485). However, Council approved only a one-year extension requiring construction to commence by January 2016.

Second Amending Agreement: The approved extended commencement date also passed before construction began and a new property owner acquired the lands from the original developer. The new owner requested an additional three-year commencement extension in 2017 but Council approved only a one-year extension resulting a new commencement date of August 11, 2018. This date has also passed without construction being undertaken and the obligations under the existing development agreement are at an end unless Council agrees to establish a new commencement date.

Amendments extending the date of commencement are identified as non-substantive matters in Section 6.2 of the existing development agreement and may be approved through a resolution of Council without a public hearing.

The completion date in the agreement is 20 years from the date of original registration, which is March 31, 2029. No requests for extensions to the date of completion have been made.

Proposal Details

The applicant has requested a construction commencement of date of one-year from the date the proposed amending development agreement is registered in the Land Registration Office.

Enabling Policy and LUB Context

The Cole Harbour-Westphal MPS Policy UR-8 permits townhouse development without individual access to a public street through the development agreement process subject to the provisions of policy IM-11. Policy IM-11 sets out criteria to be considered for all applications for land use by-law amendments or development agreement. Additionally, policy UR-4 establishes a general objective for a 70:30 housing mix ratio between single unit dwellings and other types of residential dwelling units. These are the policies under which the agreement was considered and approved and they remain in effect.

Section 6.2 of the existing development agreement permits Council to consider extensions to the date of commencement as non-substantive amendments.

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 date by one year.

The proposed time extensions can be considered by Community Council as non-substantive amendments as provided for in section 6.2 (a) in the original development agreement. The enabling policies UR-4 and UR-8 of the Cole Harbour-Westphal MPS have not changed since the application was originally approved. Therefore, the proposal remains reasonable 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 date of commencement. 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 Third 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 third 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 third 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

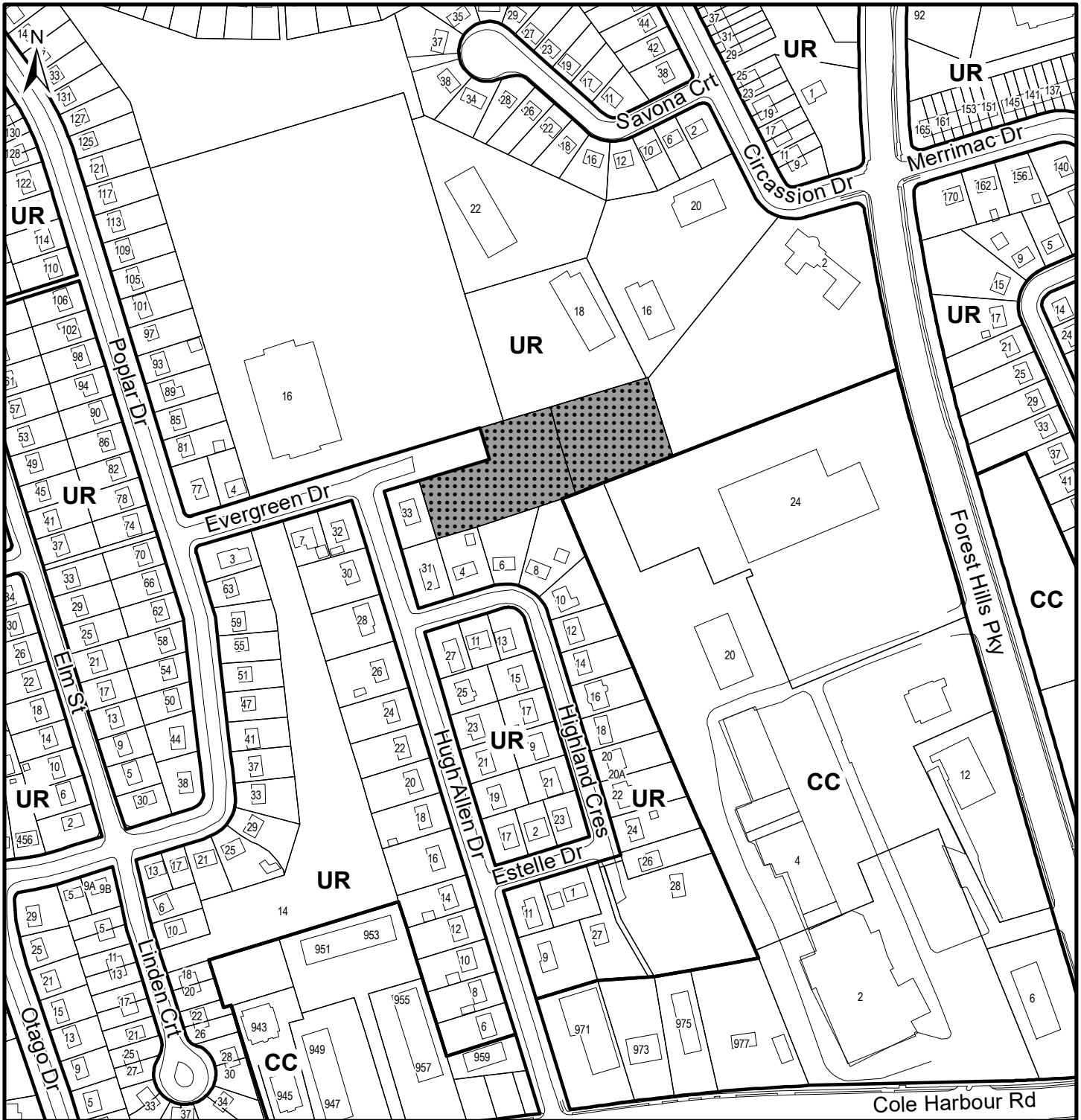
Attachment A: Proposed Third Amending Development Agreement

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: Anne Totten, Planner II, 902-490-4919

Original Signed

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



Map 1 - Generalized Future Land Use

PIDs 00398552 & 40414633
 Cole Harbour

HALIFAX

Subject Properties

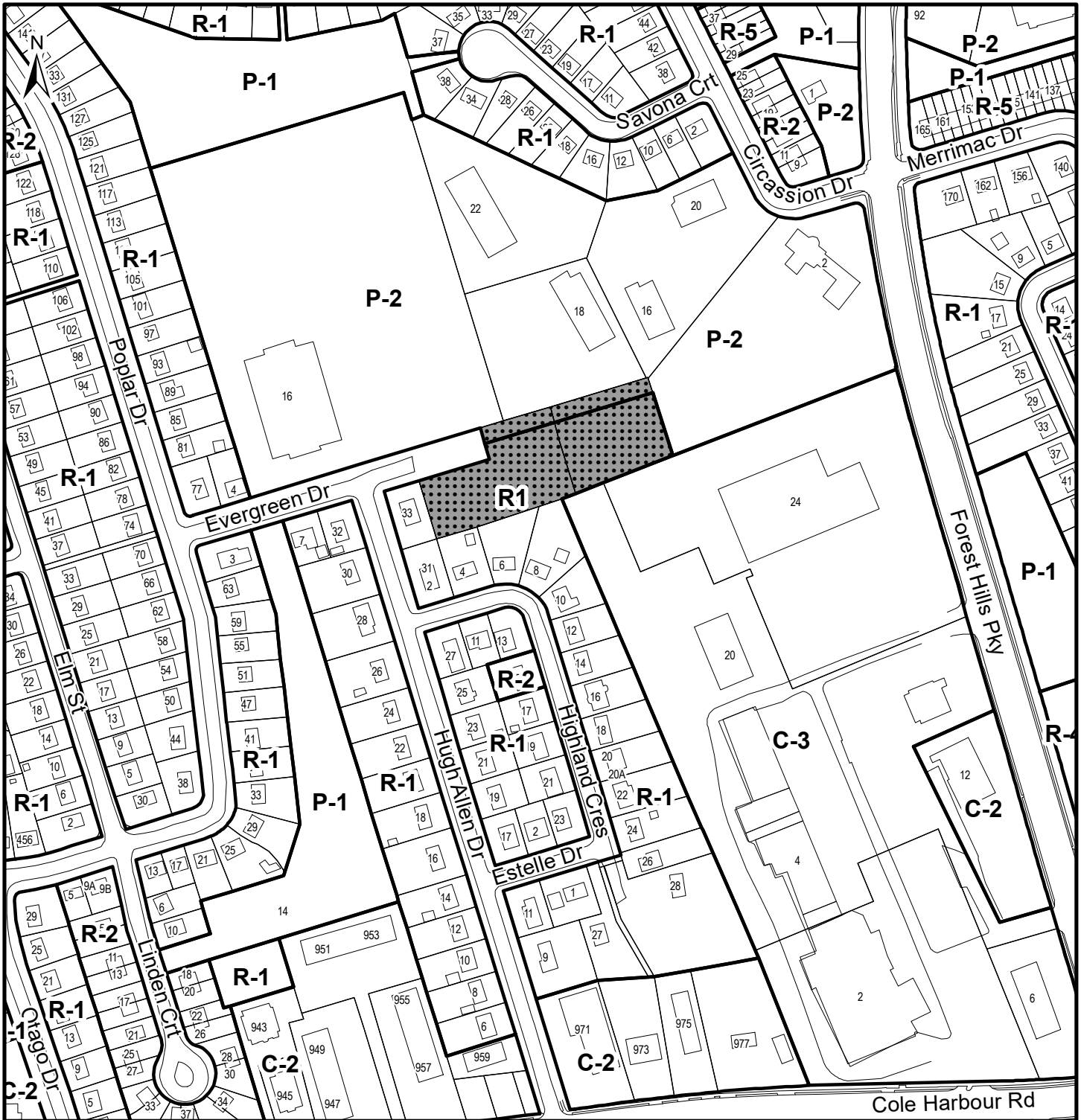
Designation
 CC Community Commercial
 UR Urban Residential



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.

Cole Harbour/Westphal
 Plan Area



Map 2 - Zoning

PIDs 00398552 & 40414633
 Cole Harbour

 Subject Properties

- Zone**
- C-2 General Business
 - C-3 Shopping Centre
 - P-1 Open Space
 - P-2 Community Facility
 - R-1 Single Unit Dwelling
 - R-2 Two Unit Dwelling
 - R-4 Multiple Unit Dwelling
 - R-5 Rowhouse Dwelling



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.

Cole Harbour/Westphal
 Land Use By-Law Area

Attachment A: Proposed Third Amending Development Agreement

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

BETWEEN:

LAMBIE CONSTRUCTION INC.

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 Evergreen Drive, Cole Harbour (PIDs 00398552 and 40414633) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Harbour East Community Council of the Municipality approved an application to enter into a Development Agreement to allow for a 16-unit townhouse development on the Lands (municipal case number 01145), pursuant to the provisions in the *Municipal Government Act* and Policy UR-8 and IM-11 of the Cole Harbour-Westphal Municipal Planning Strategy at a meeting on December 4, 2008, which said Development Agreement was registered at the Land Registration Office in Halifax on March 31, 2009 as Document Number 93061001 (hereinafter called the "Original Agreement") and which applies to the Lands;

AND WHEREAS the Harbour East-Marine Drive Community Council of the Municipality approved an application to amend the Original Agreement to allow for a one-year extension to the date of Commencement of Development on the Lands (municipal case 19485), pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policies UR-8 and IM-11 of the Cole Harbour-Westphal Municipal Planning Strategy at a meeting on November 13, 2014, which said Amending Development Agreement was registered at the Land Registration Office in Halifax on February 19, 2015 as Document Number 106668354 (hereinafter called the "First Amending Agreement") and which applies to the Lands;

AND WHEREAS the Harbour East-Marine Drive Community Council of the Municipality approved an application to amend the First Amending Agreement to allow for a one-year extension to the date of Commencement of Development on the Lands and to remove the provision requiring a further 'non-substantive amendment' prior to Phase 2 commencing (municipal case 20260), pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policies UR- and IM-11 of the Cole Harbour-Westphal Municipal Planning Strategy at a meeting on May 4, 2017, which said Development Agreement was registered at the Halifax County Land Registration Office on August 11, 2017 as Document Number 111228285 (hereinafter called the "Second Amending Agreement") and which applies to the Lands;

AND WHEREAS the Original Agreement, the First Amending Agreement and Second Amending Agreement together comprise the Existing Development Agreement (hereinafter called “the Existing Agreement”);

AND WHEREAS the Developer has requested that further amendments to the Existing Agreement to allow for a one-year extension to the date of Commencement of Development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter*, Policies UR-8 and IM-11 of the Cole Harbour-Westphal Municipal Planning Strategy, and Section 6.2 of the Existing 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 22512;

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 Third Amending Agreement, all other conditions and provisions of the Existing 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 Third Amending Agreement, and the Existing Agreement.
3. Section 8.3.1 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:
 - 8.3.1 In the event that development on the Lands has not commenced within one (1) year from the date of registration of the ~~Second~~ **Third Amending** Agreement at Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this 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.

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