



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

**Item No. 13.1.4**  
**Halifax and West Community Council**  
**July 13, 2021**

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

**SUBMITTED BY:** *Original Signed*  
\_\_\_\_\_  
Kelly Denty, Executive Director of Planning and Development

**DATE:** June 15, 2021

**SUBJECT:** **Case 23482: Discharge Development Agreement for lands at 2158, 2160, 2162, and 2164 Windsor Street, Halifax**

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**ORIGIN**

Application by Michael Lawen.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), 2008, c. 39, Part VIII, Planning & Development.*

**RECOMMENDATION**

It is recommended that Halifax and West Community Council:

1. Approve, by resolution, the Discharging Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharging Agreement be signed by the property owner within 240 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**

Michael Lawen is applying to discharge an existing development agreement that allows the property at 2158-2164 Windsor Street, Halifax to be used as store on the ground floor and two residential units on the second floor. Discharging the existing agreement will allow future redevelopment of this land to be contemplated under the existing zoning of the Regional Centre Land Use By-law.

<b>Subject Site</b>	2158, 2160, 2162, and 2164 Windsor Street, Halifax (PID 00141598)
<b>Location</b>	West side of Windsor Street between Lawrence Street and Duncan Street
<b>Regional Plan Designation</b>	US (Urban Settlement)
<b>Community Plan Designation (Map 1)</b>	COR (Corridor - Regional Centre Secondary Municipal Planning Strategy)
<b>Zoning (Map 2)</b>	COR (Corridor - Regional Centre Land Use By-law)
<b>Size of Site</b>	280.6 m <sup>2</sup> (3,020 sq. ft.)
<b>Street Frontage</b>	10 metres (32.8 ft.)
<b>Current Land Use(s)</b>	Existing two storey building with vacant commercial leasehold space on the ground floor and residential above
<b>Surrounding Use(s)</b>	Various low-rise commercial, mixed-use, and residential buildings

### **Proposal Details**

The applicant proposes to discharge the existing development agreement (Attachment B) that permits the existing two storey building to have a retail store to sell grocery products and two residential units on the second floor. The existing development agreement was approved by former City of Halifax Council on February 17, 1983. The landowner has indicated they would like to discharge the development agreement to allow for more flexible use of the commercial space and repurpose it as a restaurant. To do this, the existing development agreement would first need to be discharged.

### **Policy Context**

The *Halifax Regional Municipality Charter* provides Council with a mechanism to discharge development agreements. Part VIII, Clause 244 identifies Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner. The *Charter* does not require a public hearing for the discharge of a development agreement or a portion thereof. A Community Council may discharge a development agreement by resolution.

The 1983 development agreement allowed uses not otherwise permitted in the existing building under the site's previous zoning of R-1 under the Halifax Peninsula Land Use By-law. The applicant wishes to utilize the site under the current COR zoning, and if the agreement is discharged, future development on the site would be controlled by the COR Zone standards in the Land Use By-law for the Regional Centre.

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website and signage posted on the subject site. Staff have not received any comments from the public relating to this application, and there is no requirement for a public hearing for this application.

## **DISCUSSION**

The subject site is zoned COR in the Land Use By-law for the Regional Centre. The COR Zone permits a wide range of residential, commercial, open space, institutional, and industrial uses. A full list of the uses permitted in the COR zone can be found in Attachment C. Any of the COR uses could be permitted by-right if the existing development agreement is discharged. The maximum height of a building on this site is limited to 14 metres, in addition to a variety of other built form requirements, as per the new Regional Centre Land Use By-law.

### **Non-Conforming Structure**

The existing structure on the subject site is non-conforming under the standards of the COR Zone and section 253 of *Halifax Regional Municipality Charter*. The existing structure could remain as it is, but any additions or expansions would have to meet the requirements of the Land Use By-law for the Regional Centre.

Section 33 of the Land Use By-law for the Regional Centre also provides additional flexibility for non-conforming structures stating:

*33 (1) In any D, CEN-2, CEN-1, COR, HR-2, or HR-1 zone, the restrictions in the Charter respecting non-conforming structures are relaxed by allowing them to be extended, enlarged, or altered if the extension, enlargement, or alteration does not further worsen any non-conformity with this By-law.*

### **Timelines for Execution of the Discharging Agreement**

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances presents, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

### **Conclusion**

Staff have reviewed the proposal in terms of all relevant policy criteria and advise the request to discharge the existing development agreement is reasonably consistent with the intent of the Regional Centre Secondary Municipal Planning Strategy. The proposed discharge is also explicitly provided for in both the HRM Charter and the existing 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 discharge agreement. The administration of the proposed discharge agreement can be carried out within the approved 2021-2022 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 discharge the development agreement contained within the Discussion section of this report, if applicable.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

### **ALTERNATIVES**

1. Halifax and West Community Council may choose to refuse to discharge the existing development agreement, and therefore, development on the property would remain subject to the conditions of the agreement. A decision of Council to refuse to discharge a development agreement is appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

### **ATTACHMENTS**

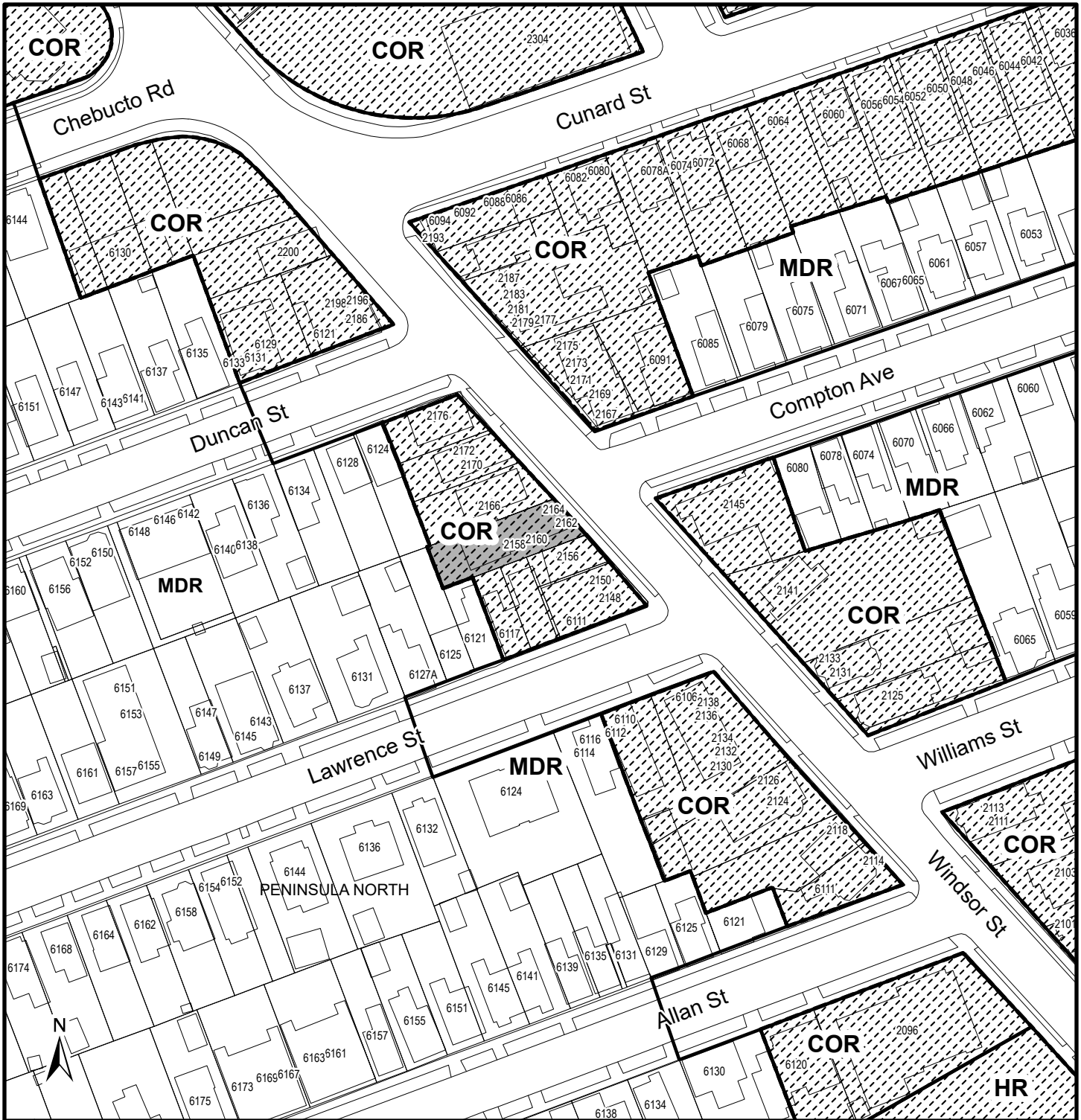
Map 1:	Generalized Future Land Use
Map 2:	Zoning
Attachment A:	Proposed Discharging Agreement
Attachment B:	Existing Development Agreement
Attachment C:	Regional Centre LUB - List of Permitted Uses in the COR Zone

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.



Report Prepared by: Meaghan Maund, Planner II, 902.233.7026

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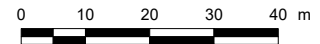


**Map 1 - Generalized Future Land Use**  
 2158, 2160, 2162, and 2164 Windsor Street,  
 Halifax

**HALIFAX**

-  Subject Property
-  Regional Centre Package A

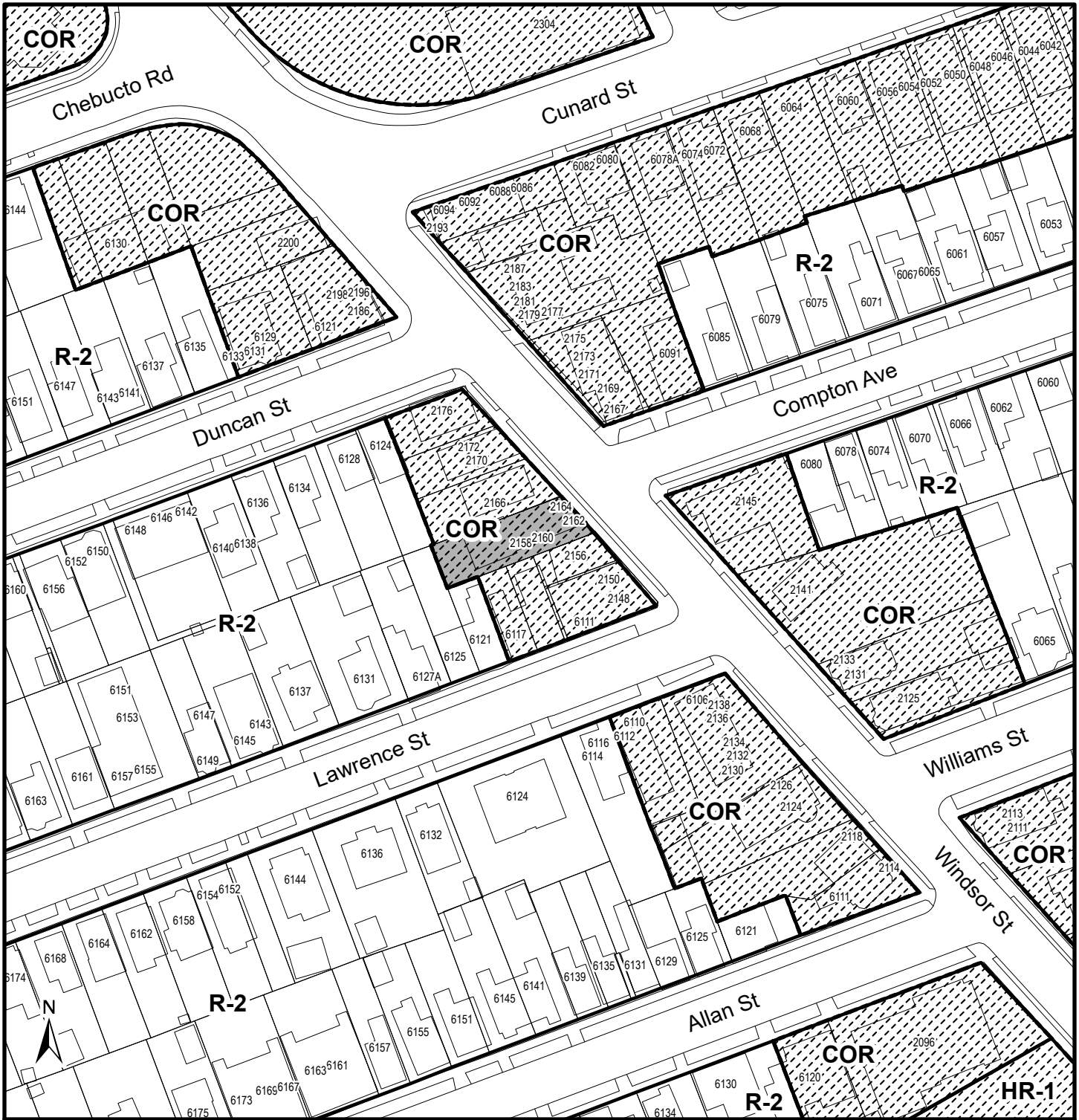
- Designation**
- RC COR Corridor
  - HPNSPS HR High-Order Residential
  - MDR Medium Density Residential



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.



Regional Centre Package A Plan Area  
 Halifax Peninsula North Secondary Planning Strategy



**Map 2 - Zoning and Location**

2158, 2160, 2162, and 2164 Windsor Street,  
Halifax

**HALIFAX**

-  Subject Property
-  Regional Centre Package A

Zone	
RC	COR Corridor
HPEN	HR-1 Higher-Order Residential 1
	R-2 General Residential



Regional Centre Package A By-law Area  
Halifax Peninsula By-Law Area

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.

**Attachment A: Proposed Discharging Agreement**

**THIS DISCHARGING AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

BETWEEN:

**[INSERT INDIVIDUAL'S NAME]**

an individual, in the Halifax Regional Municipality, 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 2158, 2160, 2162, and 2164 Windsor Street, Halifax (PID 00141598) and which said lands are more particularly described in the Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** on February 17, 1983 the former Council of the City of Halifax approved an application to enter into a development agreement to allow commercial uses on the ground floor and two residential units on the second floor of the existing building on the Lands pursuant to Section 83 of the Halifax Peninsula Land Use By-law and referenced as case number 4253, and which said development agreement was registered on March 23, 1983 at the Registry of Deeds in Halifax in Book 3666 and Page 28 (hereinafter called the "Existing Agreement");

**AND WHEREAS** the Developer has requested that the Existing Agreement be discharged from the Lands;

**AND WHEREAS** Section 244(2) of the *Halifax Regional Municipality Charter* states that Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owners;

**AND WHEREAS** the Halifax and West Community Council approved this request by resolution at a meeting held on **[Insert – date]**, referenced as case number 23482;

**THEREFORE** in consideration of the benefits accrued to each party from the covenants herein contained, the parties agree as follows:

1. The Existing Agreement is hereby discharged as it applies to the Lands and shall no longer have any force or effect.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Regional Centre Land Use By-law, as amended from time to time.

**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:

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**(Insert Registered Owner Name)**

Per: \_\_\_\_\_  
—

**HALIFAX REGIONAL MUNICIPALITY**

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

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.

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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 Iain MacLean, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

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A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX, NOVA SCOTIA

Attachment B: Existing Development Agreement

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THIS AGREEMENT made this 8<sup>th</sup> day of March, 1983

BETWEEN:

JACK LAWEN, of Halifax, in the  
County of Halifax and Province  
of Nova Scotia  
(Hereinafter called the "Developer")

OF THE ONE PART

- and -

CITY OF HALIFAX, a body corporate  
(Hereinafter called the "City")

OF THE OTHER PART

WHEREAS the Developer wishes to obtain permission to  
retain a store with two dwelling units above at 2160 Windsor  
Street in the City, pursuant to section 83 of the Peninsula  
Part of the Zoning Bylaw of the City;

AND WHEREAS a condition of the granting of approval of  
Council is that the Developer enter into an agreement with the  
City;

AND WHEREAS the Council of the City, at its meeting on  
the 17th day of February, 1983, approved the said contract  
development to permit the existing building at 2160 Windsor  
Street to be used as commercial on the ground floor with two

RECEIVED

City of Halifax

dwelling units above at 2160 Windsor Street subject to the registered owner of the lands described herein entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the City of the contract development requested by the Developer, the Developer agrees as follows:

1. The Developer is the registered owner of the lands known as 2160 Windsor Street in the City of Halifax described in Schedule "A" hereto (hereinafter called the "lands").
2. The Developer shall construct on the lands a building, which in the opinion of the Development Officer, is substantially in conformance with Plans No. P200/11553 & 11628, filed in the City of Halifax Development Department as Case No. 4253 and shall not develop or use the lands for any other purpose than a retail store to sell grocery products and two dwelling units.
3. Notwithstanding any other provision of this agreement, the Developer shall not undertake or carry out any development on the lands which does not comply with all City of Halifax laws, including, without restricting the generality of the foregoing, the Building Code Ordinance and the Fire Prevention Ordinance, and no permit shall be issued for any such

development.

4. The City shall issue the necessary permits for the development upon the expiration of the thirty (30) day appeal period under Section 35 of the Planning Act, Stats. N.S. 1969 c. 16 as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken provided; however, that the City shall not issue any occupancy permit for the development unless and until the development specified in the plans referred to in paragraph 2 hereof has been completed substantially in accordance with the said plans and the requirements of this have been met.

THIS agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED and DELIVERED  
in the presence of

[Redacted]

[Redacted]

[Redacted]

JACK LAWREN

CITY OF HALIFAX

[Redacted]

Mayor

[Redacted]

City Clerk



ALL that certain lot, piece or parcel of land situate, lying and being on the West side of Windsor Street in the City of Halifax, and being the same property conveyed from Morris Bernstein to Nathan Bernstein by Deed dated October 30, 1951 and recorded in Book 1135, page 989, the boundaries of said lot being more particularly described as follows:

BEGINNING on the westerly official street line of Windsor Street, at the northeast angle of the land conveyed to James Andrew Bremner by Deed dated July 31st, 1928 and recorded in Book 638, page 337, the said angle being also the northeast angle of the brick building located on the said Bremner property and the point of beginning, being also distant 64.2 feet, more or less, measured along the westerly official street line of Windsor Street from the northerly official street line of Lawrence Street;

THENCE Westwardly along the northerly boundary of the said Bremner property and along the northerly boundary of the property conveyed to George D. Manuel by Deed recorded in Book 819, page 50, and along the northerly boundary of the property conveyed to Lewis H. Hartlin by Deed recorded in Book 752, page 597, 105.6 feet more or less, to the southeast angle of the property conveyed to Lewis H. Hartlin by Deed recorded in Book 1054, page 553;

THENCE northwardly along the easterly boundary of the said Hartlin property, 30 feet, more or less, to the southerly boundary of the property of George F. Faulkner;

THENCE Eastwardly along the southerly boundary of the said Faulkner property and the southerly boundary of the property conveyed to Milton Hubley by Deed recorded in Book 1111, page 273, 92.5 feet more or less, to the westerly official street line of Windsor Street;

THENCE southwardly along the said official street line 31.8 feet, more or less to the place of beginning.

SAVING AND EXCEPTING the right of way granted to Andrew Hubley and William Fredericks, said right of way extending from Windsor Street over and along the southerly portion of the lot hereunder conveyed and said right of way being 8 feet in width and 75 feet more or less in length.

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

ON this 7<sup>th</sup> day of March A.D., 1983, before me, the subscriber personally came and appeared *Russel G. Baldwin* a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that JACK LAWEN, one of the parties thereto, signed, sealed and delivered the same in his presence.

*[Redacted Signature]*  
A Barrister of the Supreme  
Court of Nova Scotia  
GERALD J. GONEAU  
A Barrister of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

ON this 14<sup>th</sup> day of March A.D., 1983, before me, the subscriber personally came and appeared *William Wallace* a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that the City of Halifax, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of Ronald Wallace, its Mayor and Gladys Blennerhassett, its City Clerk, its duly authorized officers, in his presence.

*[Redacted Signature]*  
A Barrister of the Supreme  
Court of Nova Scotia  
GERALD J. GONEAU  
A Barrister of the Supreme Court  
of Nova Scotia

Province of Nova Scotia  
County of Halifax

I hereby certify that the within instrument was recorded in the Registry of Deeds Office at Halifax, in the County of Halifax, N. S. at 12:03 o'clock P. M., on the 23 day of March, 1983 in Book Number 3666 at Pages 28-32

*Deputy*  
Registrar of Deeds for the Registration District  
of the County of Halifax.

## Attachment C: Regional Centre LUB - List of Permitted Uses in the COR Zone

The subject site is zoned COR under the Regional Centre Land Use By-law. Permitted uses in the COR Zone are as follows:

<b>RESIDENTIAL</b>
Single-unit dwelling use
Semi-detached dwelling use
Townhouse dwelling use
Two-unit dwelling use
Three- and four- unit dwelling use
Multi-unit dwelling use
Secondary suite use or backyard suite use
Shared housing use
Large shared housing use
Bed and breakfast use
Home occupation use
Home office use
Work-live unit use
Grade-related unit use
Model suite use
<b>COMMERCIAL</b>
Broadcast use
Daycare use
Local drinking establishment use
Financial institution use
Fitness centre use
Garden centre use
Grocery store use
Hotel use
Local commercial use
Micro-brewery use or micro-distillery use
Office use
Pawn shop use
Personal service use
Pet daycare use
Quick charging station use* (*permitted on corner lot only)
Restaurant use
Retail use
Self-storage facility use
Veterinary facility use
Workshop use
<b>URBAN AGRICULTURE</b>
Farmers' market use
Urban farm use
<b>INSTITUTIONAL</b>
Cultural use
Emergency services use
Emergency shelter use
Minor spectator venue use
Medical clinic use
Religious institution use
School use
University or college use
<b>INDUSTRIAL</b>
Recycling depot use
Wholesale food production use

<b>PARK AND RECREATION</b>
Club recreation use
Community recreation use
Park Space
<b>WATER ACCESS</b>
Water access structure use
<b>OTHER</b>
Accessory structure or use
Historic site or monument use
Parking structure use
Temporary construction use
Transportation facility use
Utility use