



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 13.1.2
Harbour East – Marine Drive Community Council
Special Meeting
August 5, 2021
September 2, 2021

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

SUBMITTED BY: - Original Signed -
Kelly Denty, Executive Director of Planning and Development

DATE: June 10, 2021

SUBJECT: **Case 23609: 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 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

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 development by two years from the date the amending agreement is registered.

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| Subject Site | Evergreen Drive, Cole Harbour (PID's 00398552 and 40414633) |
| Location | Eastern end of Evergreen Drive, East of Hugh Allen Drive |
| Regional Plan Designation | Urban Settlement (US) |
| Community Plan Designation (Map 1) | Urban Residential (UR) under the Cole Harbour-Westphal Municipal Planning Strategy (MPS) |
| Zoning (Map 2) | Single Unit Dwelling (R-1) under the Cole Harbour-Westphal Land Use By-law (LUB) |
| Size of Site | 5,639.5 sq. m (60,705 sq. ft.) in area |
| Street Frontage | 38.84 m (127.43 ft.) |
| Site Conditions | Site cleared for construction |
| 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 01145) to construct 16 townhouses abutting an unconstructed section of Evergreen Drive, to be accessed by a shared private driveway. The report and site plan may be found at the following location: <http://legacycontent.halifax.ca/commcoun/hecc/documents/Case01145.pdf>.

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

First Amending Agreement: Construction did not commence by the required date, and 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, however Council approved only a one-year extension resulting in a new commencement date of August 11, 2018. This date also passed without construction being undertaken.

Third Amending Agreement: Again, the approved extended commencement date passed before construction began. The developer made a request to extend the date of commencement by one additional year, which Council approved and resulted in a new commencement date of April 14, 2020.

The applicant is now requesting Council approve a Fourth Amending Agreement to again extend the date of commencement of the development. Construction activity has begun at the site following Council's approval of the second extension of the commencement date, however the definition of 'commencement of development' under the development agreement required the installation of footings for the building to have taken place before April 14, 2021 and this has not occurred. Therefore, a fourth 'time extension' is required to allow permits to be issued and the development to be completed.

Amendment requests to extend 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.

The private driveway that will provide access for the townhouses has a proposed street name (Kousa Lane) under bylaw C-300 (Respecting Civic Addressing), and should the time extension be approved by Council, and building permits issued, all dwellings off this driveway will receive addresses under this new street name.

Proposal Details

The applicant has requested a construction commencement of date of two-years 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 agreements. 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.

As noted above, 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 development 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 two-years.

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 reasonably consistent with those specific policies and the MPS at large.

Timeframe for Agreement Execution

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 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 Fourth Amending 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 development agreement. The administration of the proposed development 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 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 fourth amending development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report. 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. Harbour East-Marine Drive Community Council may choose to refuse the proposed fourth 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*.

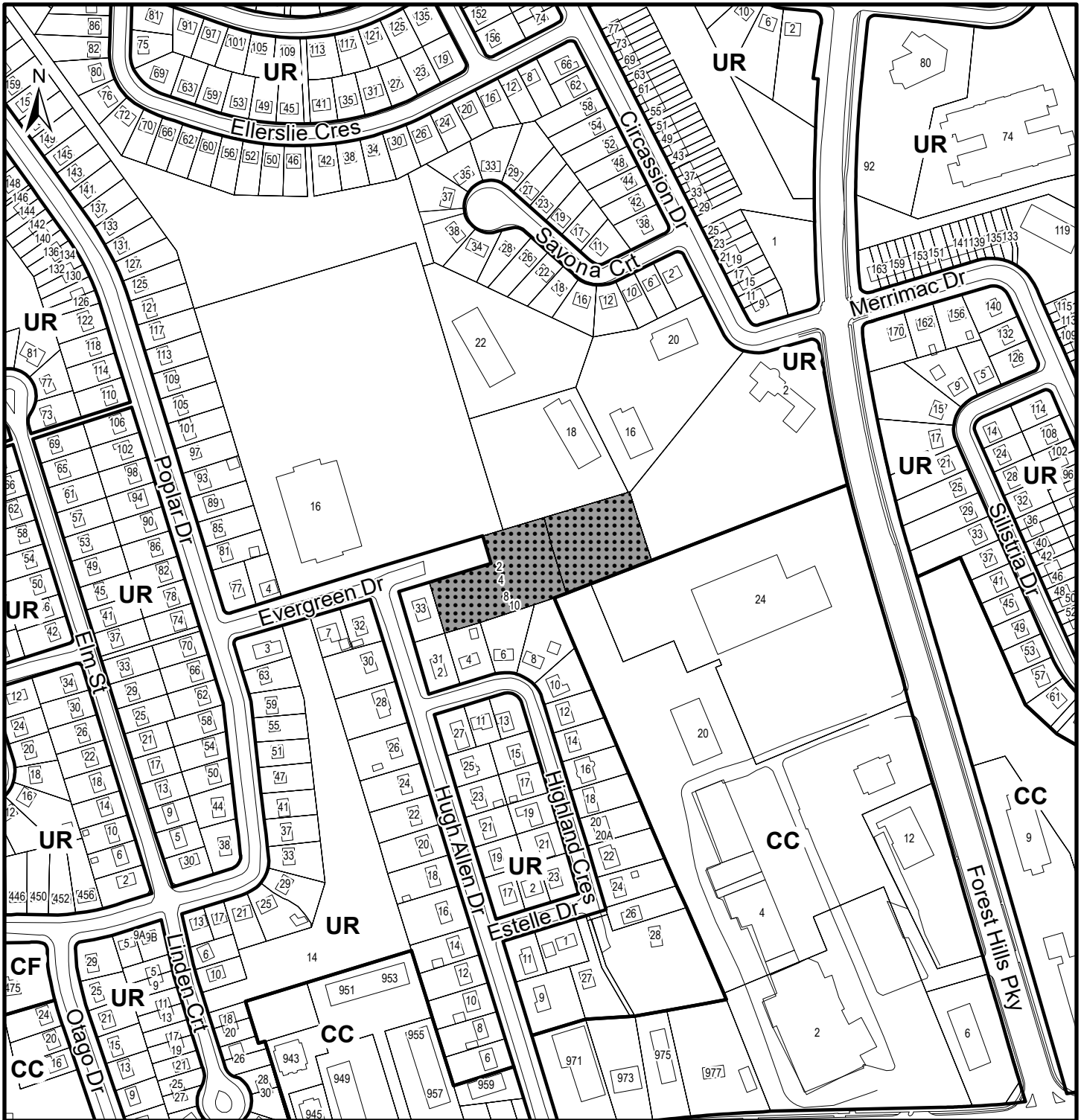
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Fourth 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: Darrell Joudrey, Planner II, 902.225.8630



Map 1 - Generalized Future Land Use

PID: 00389552, 40414633
 Evergreen Drive,
 Cole Harbour

 Subject Property

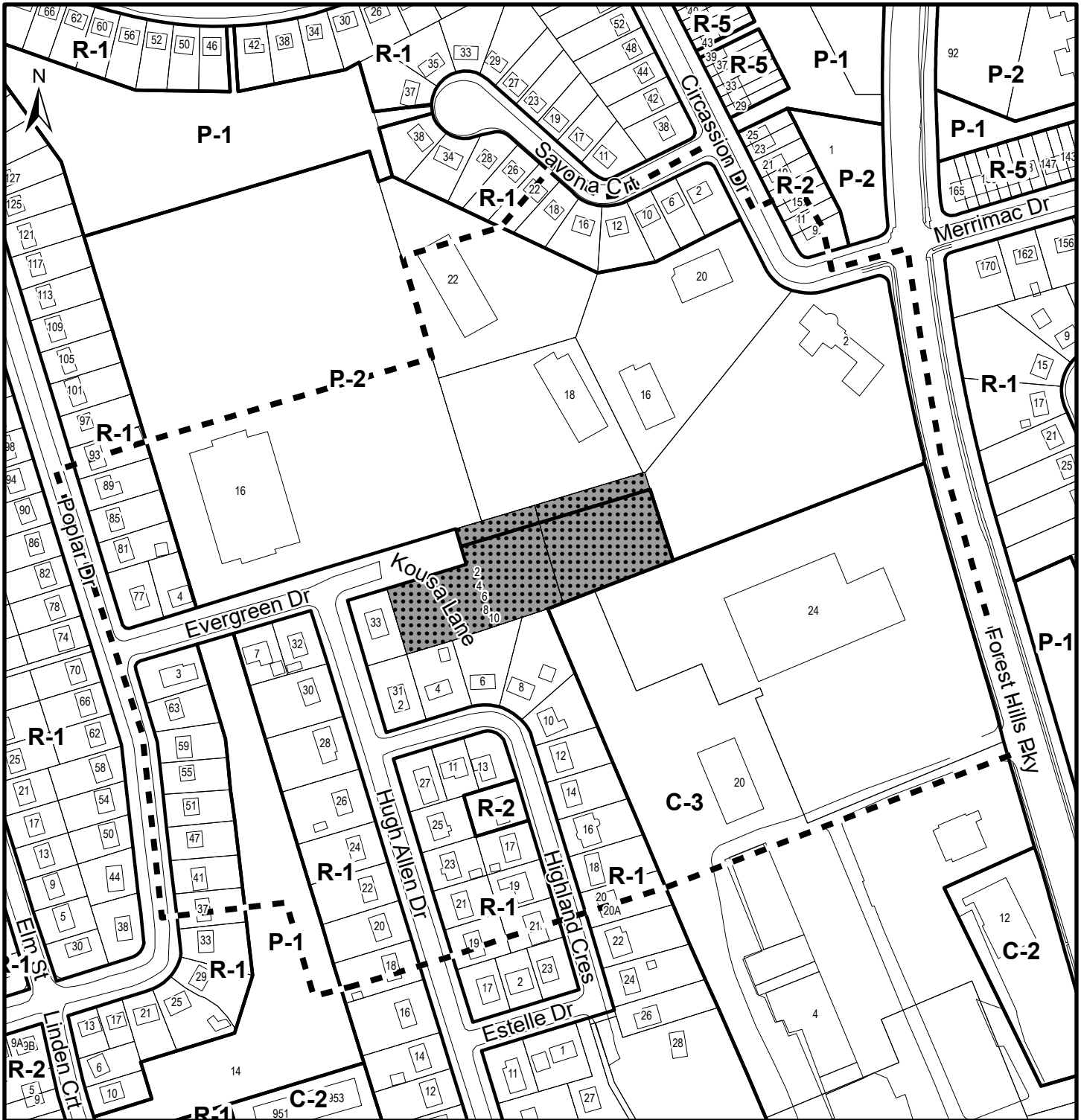
- Designation**
- CC Community Commercial
 - CF Community Facility
 - UR Urban Residential



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

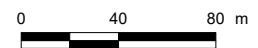


Map 2 - Zoning and Notification

PID: 00389552, 40414633
 Evergreen Drive,
 Cole Harbour

-  Subject Property
-  Area of Notification

- 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-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 Fourth Amending Development Agreement

THIS FOURTH AMENDING AGREEMENT made this day of **[Insert Month]**, 2021,

BETWEEN:

(Insert Registered Owner Name)

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 (PID's 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 approved an application to enter into a Development Agreement to allow for a 16-unit townhouse development on the Lands (municipal case 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, and 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 approved an application to amend the Original Agreement to allow for a (1) 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, and 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 approved an application to further amend the Original Agreement to allow for an additional (1) 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-8 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 Harbour East-Marine Drive Community Council approved an application to further amend the Original Agreement to allow for an additional (1) one-year extension to the date of Commencement of Development on the Lands 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 December 5, 2019, which said Development Agreement was registered at the Halifax County Land Registration Office on April 14, 2020 as Document Number 116191520 (hereinafter called the “Third Amending Agreement”) and which applies to the Lands;

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

AND WHEREAS the Developer has requested further amendments to the Existing Agreement to allow for a (2) two-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 23609;

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

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1. Except where specifically varied by this Fourth 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 Fourth 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 (2) two-years** from the date of registration of the ~~Third~~ **Fourth** 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 Iain MacLean, 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