



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

Item No.13.1.2
Harbour East – Marine Drive Community Council
December 2, 2021
January 13, 2022

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

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

DATE: November 3, 2021

SUBJECT: Case 23706: Non-substantive amendments to an existing development agreement for 842 Portland Street, Dartmouth

ORIGIN

Application by Lindsay 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 to allow additional commercial signage;
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 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

Martin Kreft, of Lindsay Construction, is applying for a non-substantive amendment to an existing development agreement to allow for additional commercial signage at an existing building located at 842 Portland Street, Dartmouth. The existing development regulates land uses for the buildings at 842 Portland Street and 670 Portland Hills Drive, Dartmouth.

Subject Site	842 Portland Street, Dartmouth (PID 41044793) and 670 Portland Hills Drive, Dartmouth (PID 00230821)
Location	Southwest corner of Portland Street and Portland Hills Drive
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Residential (R) under the Dartmouth Municipal Planning Strategy (MPS)
Zoning (Map 2)	Comprehensive Development District (CDD) and Holding (H) under the Dartmouth Land Use By-law (LUB)
Size of Site	842 Portland Street: 7125 sq. m (76,698 sq. ft.) in area 670 Portland Hills Drive: 8,702 sq. m (93,673 sq. ft.) in area
Street Frontage	842 Portland Street: Approximately 126 m (413 ft.) on Portland Street and 50 m (164 ft.) on Portland Hills Drive 670 Portland Hills Drive: approximately 76 m
Site Conditions	Existing commercial buildings
Current Land Use(s)	Commercial and Residential
Surrounding Land Use(s)	The surrounding land uses is a mix of: are comprised mainly of residential, commercial and institutional uses: <ul style="list-style-type: none">• South – low density residential development (Portland Estates)• East – commercial uses and the Metro Transit Portland Hills Terminal• North – low density residential and the Regal Heights Baptist Church Church• West – low density residential development

Existing Development Agreement

On August 3, 2017 Harbour East Community Council approved a development agreement (Case 19626) to construct a multiple unit residential building with ground floor commercial uses (670 Portland Hills Drive), and two commercial/office buildings (842 Portland Street). At the time the agreement was approved the lands had not yet been subdivided into two separate parcels. The report and site plan may be found at the following location:

<https://www.halifax.ca/sites/default/files/documents/city-hall/community-councils/170803hemdccc81i.pdf>

The lands were subdivided into two lots in 2018, and building permits were issued as follows:

842 Portland Street:

Building permit (no.180028) was issued in 2020 for one commercial/office building at 842 Portland Street. Two buildings were permitted on this lot in the original agreement, however, the Developer applied to construct one larger building at the same footprint as the two originally proposed. This was determined by the Development Officer to meet the original development agreement. Accordingly, one commercial building was built instead of two. It is this commercial building located on-site today, for which the proposed amendments will affect. Commercial signage permitted for this building in the original agreement is restricted to one ground sign and directional signage.

670 Portland Hills Drive:

Building permit (no.181295) was issued in 2020 for a residential building at 670 Portland Hills Drive. The original development agreement enabled this building to have commercial space on the bottom floor,

however, the Developer built residential only. This building is currently under construction and is located adjacent to the commercial building at 842 Portland Street. Both buildings are under the original development agreement, however, the requested changes will only impact the building at 842 Portland Street. Commercial signage permitted for this building in the original agreement includes 2 wall mounted fascia signs for each business (maximum 60 square feet), and 2 fascia signs for identification purposes (maximum of 100 square feet), and directional signage.

Proposal Details

The request is to modify the signage requirements for the commercial building, however as the agreement regulates the land use for both buildings, both land owners will be required to sign the amending agreement. The existing agreement provides different signage requirements for the commercial and residential buildings. The commercial building is limited to one ground sign and directional signage. It does not provide for additional tenant signage for any of the individual tenants in the building. As such, the applicant is requesting:

- 3 fascia signs for each business, with no sign exceeding 5.57 sq. m (60 sq. ft.) in area; and
- 2 fascia signs for identification purposes, with no sign exceeding 9.29 sq. m (100 sq. ft.)

Enabling Policy and LUB Context

A site specific MPS amendment was approved by Regional Council in 2016 that enabled a mixed use commercial residential development on these lands. Therefore, enabling policy ML-36 in the Dartmouth MPS as well as the provision of Implementation policy IP-1(c) would apply. Additionally, section 18X of the Dartmouth Land Use By-law identifies these lands for consideration of a development agreement. These are the policies under which the original agreement was considered and approved and they remain in effect.

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. HRM did not receive any calls or emails from the public. 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 Dartmouth MPS, and that the same policies that applied during the negotiation of the original development agreement remain in effect.

Proposed Amending Development Agreement

Attachment A contains the proposed amending development agreement for the subject site. The proposed amendments allows for additional commercial signage for the commercial building for its tenants as follows:

- 3 fascia signs for each business, with no sign exceeding 5.57 sq. m (60 sq. ft.) in area; and
- 2 fascia signs for identification purposes, with no sign exceeding 9.29 sq. m (100 sq. ft.)

The square footage maximums per fascia sign are consistent with those in the existing agreement permitted for commercial uses in the adjacent building. The number of fascia signs per business is proposed at 3 as the building is commercial use only and three fascia signs per business is appropriate for a building of this use and scale. The number of fascia signs for identification purposes is also consistent with identification signs permitted in the adjacent building. Identification signs refer to the name of the building. The Land Use By-law for Dartmouth does not restrict number of fascia signs per business, however a maximum of three

fascia signs per business as well as maximum sign area, ensures minimal impact on the adjacent properties as signage size and lighting are minimal.

The proposed amendments may be considered by Community Council as non-substantive amendments as provided for in section 6.1 (d) of the existing development agreement allows Council to consider changes to the requirements related to signage as non-substantive amendments. The amending agreement does not include any changes to the mixed use building at 670 Portland Hills Drive.

A review of relevant Dartmouth MPS policies is found in Attachment B.

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 the difficulty these unusual circumstances present, 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 enabling policies ML-36 and IP-1(c) of the Dartmouth 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. Therefore, staff recommend that the Harbour East-Marine Drive Community Council approve the proposed First 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 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 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*.

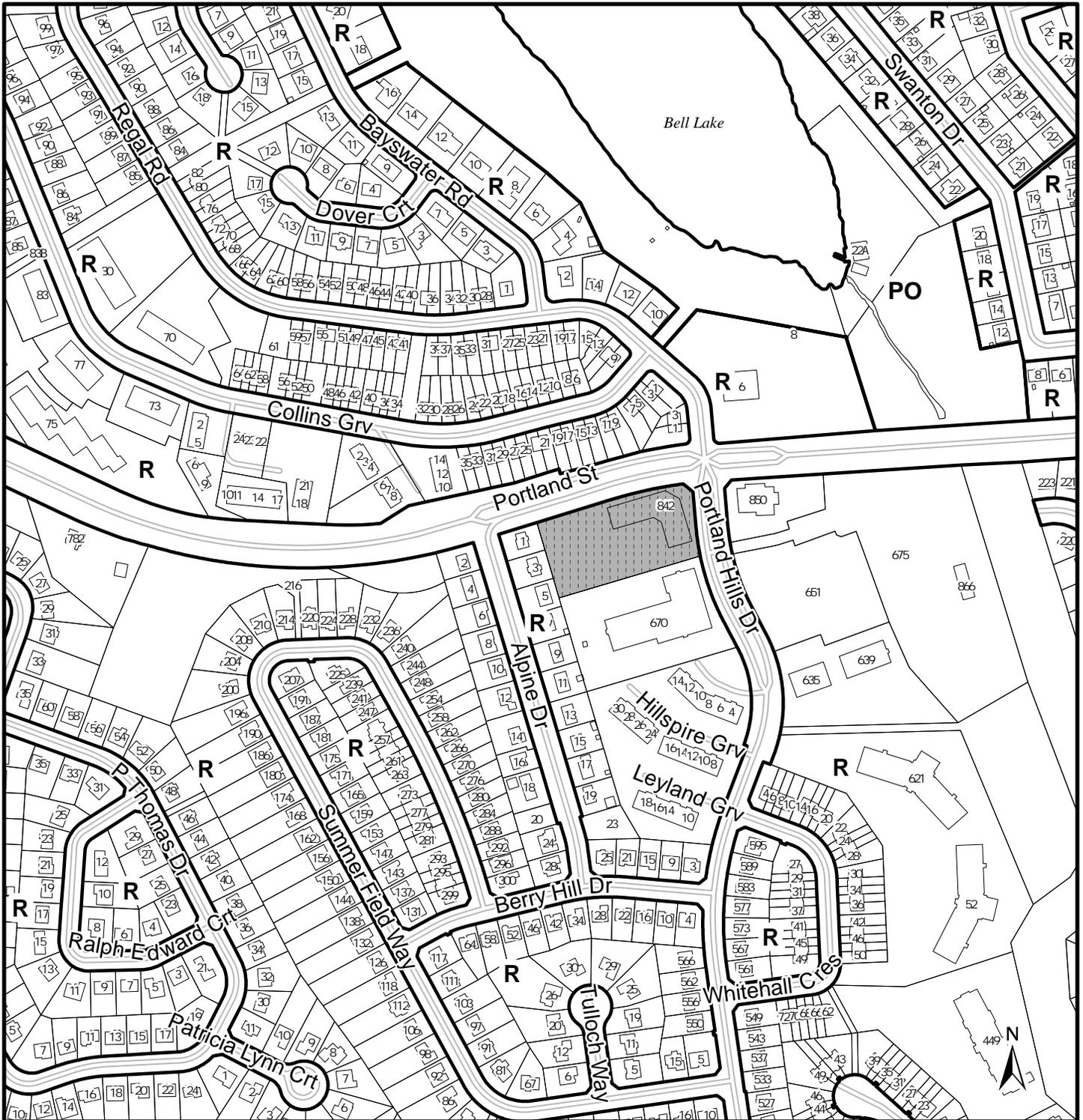
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning Map

Attachment A: Proposed Amending Development Agreement
Attachment B: Review of Relevant MPS Policies

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: Brittney MacLean, Planner II, 902.223.6154



Map 1 - Generalized Future Land Use

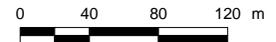
842 Portland Street,
Dartmouth

HALIFAX

 Subject Property

Designation

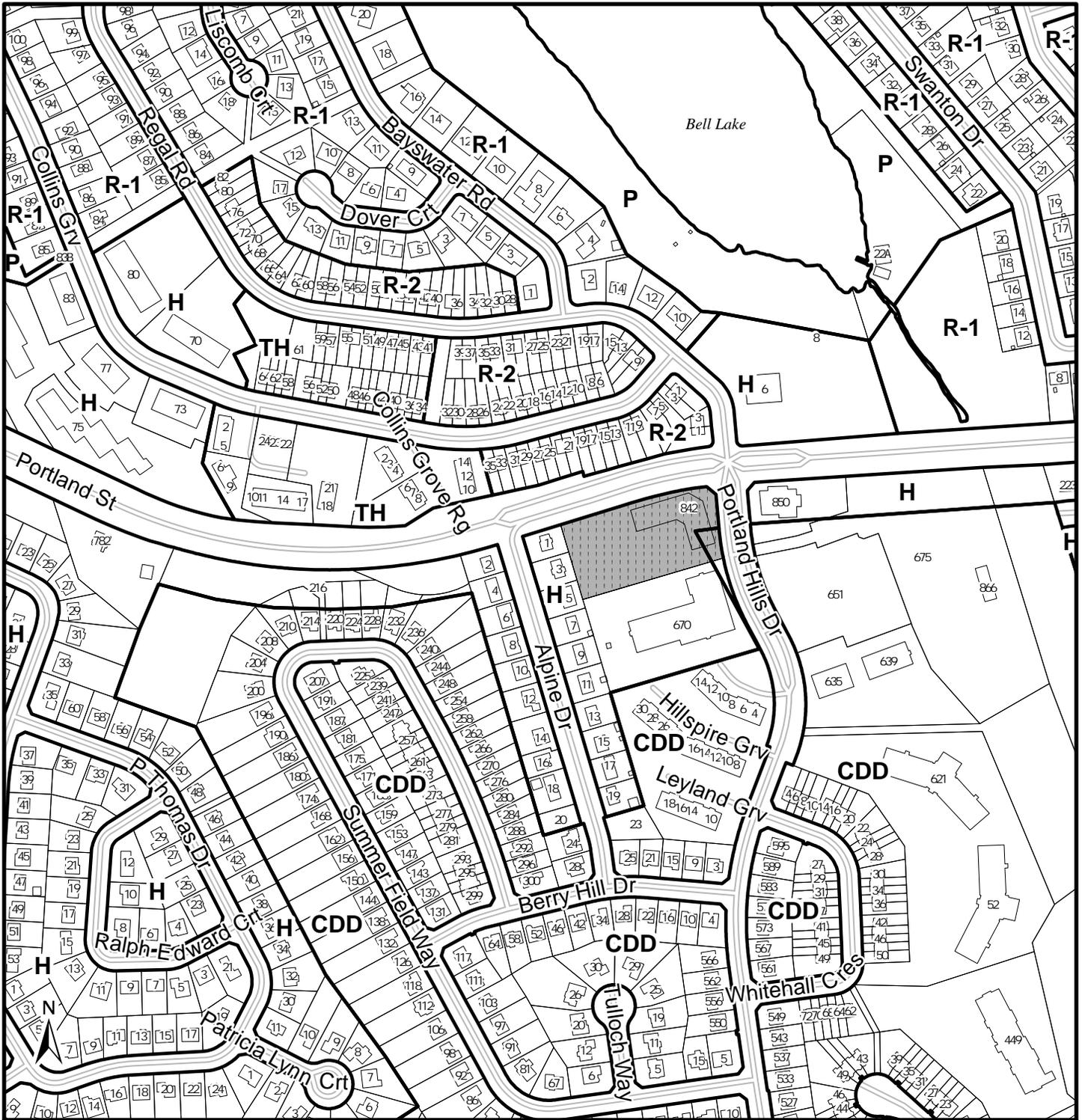
- R Residential
- PO Park & Open Space



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 and Location

842 Portland Street,
Dartmouth

 Subject Property

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- TH Town Housing
- P Park
- H Holding
- CDD Comprehensive Development District



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

Attachment A: Proposed Amending Development Agreement

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

BETWEEN:

PARKTON WELLNESS LIMITED

a body corporate, in the Province of Nova Scotia

- and -

HARTIE INVESTMENTS INCORPORATED

A body corporate, in the Province of Nova Scotia

(together 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 PID 41044793 and 00230821, along Portland Street and Portland Hills Drive, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on August 3, 2017 Harbour East-Marine Drive Community Council approved an application to enter into a Development Agreement to allow for the development of one (1) mixed use multiple residential building and two (2) commercial/office buildings on the Lands (municipal case 19626), and which said Development Agreement was registered at the Land Registration Office in Halifax on January 12, 2018 as Document Number 111984267 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested amendments to the Original Agreement to allow for additional commercial signage on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy ML-36 of the Dartmouth Municipal Planning Strategy and Section 2, Part 18, of the Dartmouth Land Use By-law;

AND WHEREAS the Harbour East Marine Drive Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 23706;

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. Subsection 3.11.1 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in **bold**, as follows:

3.11.1 Commercial signage shall be limited to the following:

- (a) A maximum of one (1) ground sign shall be permitted on the Lands in accordance with Schedule B and shall be for the purposes of identifying the commercial buildings;
- (b) Ground sign shall not exceed 1.83 metres (6) feet in height above established grade;
- (c) Ground sign shall be setback a minimum of 3.05 metres (10 feet) from any abutting property;
- (d) Ground sign shall not exceed a sign face width of 3.05 metres (10 feet);
- (e) Ground sign shall not be internally illuminated or backlit;
- (f) Ornamental plants shall be incorporated around the entire base of a ground sign; ~~and~~
- (g) Directional signage shall be permitted on the Lands subject to clauses (b) through (f) of this section-;
- (h) Three (3) wall mounted (fascia) signs may be permitted per business in a commercial building. No fascia sign for businesses shall exceed 5.57 square metres (60 square feet) in area; and**
- (i) Two (2) wall mounted (fascia) building identification signs (including building name) may be permitted on the commercial building. No fascia sign for building identification shall exceed 9.29 square metres (100 square feet) in area.**

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:

PARKTON WELLNESS LIMITED

Witness

Per: _____

HARTIE INVESTMENTS INCORPORATED

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

Attachment B: Review of Relevant MPS Policies

Dartmouth Municipal Planning Strategy (MPS)	
Policy	Comments
<p>Policy ML-36: In addition to a medium scale multiple unit residential dwelling, small scale commercial/office development fronting Portland Street and Portland Hills Drive are considered desirable at the southwest corner of Portland Street and Portland Hills Drive (PID #00230821 & 41044793), a key corner site within the within Residential Designation of the Morris Russel Lake Secondary Planning Strategy. Any such development shall be considered by way of development agreement. In considering any such agreement, Council shall have regard to the following:</p>	
<p>(a) That commercial/office buildings are oriented to the street and transit services, and primary entrances are oriented to the sidewalk and primary pedestrian ways;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(b) That commercial buildings not exceed a height of three storeys;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(c) That residential buildings not exceed a height of five storeys;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(d) That adequate recreation and amenity space is provided on the site and within the residential building;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(e) That pedestrian street level activity is encouraged in proximity to the street through the incorporation of commercial ground floor uses that relate to the street and public realm;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(f) That residential buildings include underground parking and that the parking podium/building basement is constructed substantially below grade or adequately blended into the site;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(g) That the development is integrated with and complementary to the surrounding built form, land uses, and abutting residentially-zoned areas through conformance with the site development and architectural standards of the C-2 (General Business) zone of the Dartmouth Land Use By-law;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(h) That mature tree stands and other natural site features are preserved where possible;</p>	<p>This is addressed in the existing development agreement. No change.</p>

<p>(i) That traffic related matters such as traffic generation and circulation, sighting distances, site access and egress and pedestrian safety are addressed;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(j) That vehicular access to Portland Street from the Lands shall not be permitted;</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(k) That lighting shall be designed to provide security, safety, and visual appeal for both pedestrians and vehicles while ensuring minimal impact on adjacent properties; and</p>	<p>Building and site lighting is addressed in the existing development agreement, as is signage on the property.</p> <p>The existing agreement limits commercial signage to a ground sign only (maximum of one). Commercial fascia signage and building identification signage is enabled in the agreement for the mixed use building use permitted on the site, however not for the commercial only building.</p> <p>The commercial signage for the mixed use building is limited to no more than two fascia signs per business at a maximum area of 60 square feet. Building identification signage for the mixed use building is limited to two fascia signs at a maximum area of 100 square feet.</p> <p>The proposal includes three fascia signs per business. All proposed signs are under 60 square feet in area. Three fascia signs per business is more than that permitted on the mixed use building, but is appropriate for a commercial only building. A maximum of three signs per business as well as maximum sign area, ensures minimal impact on the adjacent properties as signage size and lighting are minimal.</p> <p>The proposal includes one fascia sign for building identification "Parkton Wellness", which is under 100 square feet in area.</p> <p>The amending development agreement regulates the permitted signage to: a maximum of 3 fascia signs for each business, with no sign exceeding 5.57 sq. m (60 sq. ft.) in area and maximum of 2 fascia signs for identification purposes, with no sign exceeding 9.29 sq. m (100 sq. ft.)</p>

(l) Provisions of Policy IP-1 (c)	This is addressed in the existing development agreement. No change. See below.
Policy IP-1 (c) In considering zoning amendments and contract zoning, Council shall have regard to the following:	
(1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan	This is addressed in the existing development agreement. No change.
(2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal	This is addressed in the existing development agreement. No change.
(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries	This is addressed in the existing development agreement. No change.
<p>(4) that the proposal is not premature or inappropriate by reason of:</p> <p>(i) the financial capability of the City is to absorb any costs relating to the development</p> <p>(ii) the adequacy of sewer and water services and public utilities</p> <p>(iii) the adequacy and proximity of schools, recreation and other public facilities</p> <p>(iv) the adequacy of transportation networks in adjacent to or leading to the development</p> <p>(v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas</p> <p>(vi) preventing public access to the shorelines or the waterfront</p> <p>(vii) the presence of natural, historical features, buildings or sites</p> <p>(viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized</p> <p>(ix) the detrimental economic or social effect that it may have on other areas of the City.</p>	These are addressed in the existing development agreement. No change.

<p>(5) that the proposal is not an obnoxious use</p>	<p>This is addressed in the existing development agreement. No change.</p>
<p>(6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:</p> <ul style="list-style-type: none"> (i) type of use, density, and phasing (ii) emissions including air, water, noise (iii) traffic generation, access to and egress from the site, and parking (iv) open storage and landscaping (v) provisions for pedestrian movement and safety (vi) management of open space, parks, walkways (vii) drainage both natural and sub-surface and soil-stability (viii) performance bonds. 	<p>These are addressed in the existing development agreement. No change.</p>
<p>(7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors.</p>	<p>This is addressed in the existing development agreement. No change.</p>