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Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 13.1.3
Halifax and West Community Council
December 11, 2019 NOM
January 21, 2020

TO: Chair and Members of Halifax and West Community Council

-ORIGINAL SIGNED-

SUBMITTED BY:

Kelly Denty, Director of Planning and Development

DATE: November 20, 2019

SUBJECT: **Case 22436: Non-substantive amendments to an existing development agreement for 5885 Spring Garden Road, Halifax**

ORIGIN

Application by WSP Canada Inc.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that the Halifax and West 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 non-substantive amendments to an existing development agreement modifying parking requirements and extending the completion 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 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

WSP Canada Inc. has applied for non-substantive amendments to an existing development agreement for 5885 Spring Garden Road. The amendments seek to change the minimum number of underground parking spaces, alter the size of the parking spaces, and extend the date of construction completion by five years from the date the amending agreement is registered.

Subject Site	11-storey residential building with dentist office at grade, and surface parking lot
Location	At the northeast corner of Spring Garden Road and Carleton Street
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	HDR (High Density Residential) in the Spring Garden Road sub-area of the Peninsula Centre secondary plan, in the Halifax Peninsula MPS
Zoning (Map 2)	R-3 (High Density Residential/Minor Commercial) under the Halifax Peninsula Land Use By-law (LUB)
Size of Site	6,070 square metres (65,337 square feet) in area
Street Frontage	61 metres (200 feet) of frontage on Spring Garden Road; and 101.5 metres (333 feet) of frontage on Carleton Street.
Site Conditions	Developed lot with surrounding asphalt
Current Land Use(s)	Existing 11-storey residential and commercial building fronting Spring Garden Road, with surface parking off Carleton Street.
Surrounding Land Use(s)	The surrounding area is a mix of uses including houses, multiple-unit dwellings, restaurants, shops and other commercial uses. There are also institutional uses (Dalhousie University, Sacred Heart School), and important public spaces such as Camp Hill Cemetery and the Public Gardens.

Existing Development Agreement

On March 25, 2015, the Halifax and West Community Council approved a development agreement (case 18270) to construct an 18-storey multi-unit residential addition to an existing 11 storey building. The building addition will contain 104 residential units and be constructed on the surface parking lot behind the existing building.

Section 3.7 of the existing development agreement requires a minimum of 230 underground parking spaces, with at least 6 spaces available for the dental office and 6 spaces for visitor parking. Section 7.5 states that if the development is not completed within 5 years from the date of registration of the agreement at the Land Registration Office, Council may discharge the agreement. The existing agreement was registered on November 23, 2015.

Section 6.1.1 of the existing development agreement allows changes to parking requirements and the length of time for completion to be considered as non-substantive amendments, which may be approved by resolution of Council.

Proposal Details

The applicant has requested an extension of the completion date by five (5) years from the original date of registration of the agreement, to November 23, 2025. The development agreement defines project commencement as the issuance of building permits. Given that such permits have already been issued there is no need to extend the commencement dates. An extension to the completion dates would allow the developer time to reconfigure the underground parking layout which was necessitated by the location of structural columns in the building. Therefore, the following non-substantive amendments to the development agreement have been requested:

- Change the minimum number of parking spaces required from 230 to 180;
- Remove the minimum number of parking spaces for visitor parking in the multi-unit building; and

- Change the minimum size of the parking stalls from the requirements in the Halifax Peninsula Land Use By-law (9 feet wide and 20 feet long) to the dimensions set out in the Centre Plan Land Use By-law (7.9 feet wide and 18 feet long).

Enabling Policy and LUB Context

The development was approved under several policies:

- Policy 8.1.2 of Section XI of the Halifax MPS: allows for the consideration of buildings that would exceed the height precinct through a development agreement. The policy requires that the shadow impact on the public gardens, during the period of the year that the public gardens is open, be considered;
- Policy 8.1.3 of Section XI of the Halifax MPS: allows for the consideration of an office use at the ground level of the building. This is the policy context in which the existing dentist office was permitted;
- Implementation Policy 3.11 of the Halifax MPS: allows for the further consideration of development that does not meet the requirements of the LUB when considering applications under Policies 8.1.2 and 8.1.3, as long as the intent of the policies of the Halifax MPS and Peninsula Centre Secondary Plan are maintained; and
- Policy CH-16 of Section 7 of the Regional Plan: sets out criteria for development that abuts a municipally registered heritage property.

These policies are still in effect for 5885 Spring Garden Road and the original policy framework continues to apply to the development. As changes to parking requirements were considered non-substantive amendments, they can be considered under the Halifax Peninsula Municipal Planning Strategy policies.

The Regional Centre Plan was adopted by Council on September 18, 2019. The Regional Center Plan establishes policies for complete applications received before the date of the first publication of the notice of the intention of Council to adopt the Centre Plan. Policy 10.28 in the Regional Centre Secondary Municipal Planning Strategy (RCSMPS) states that applications for amendments to existing development agreements to extend project completion dates shall only consider extensions up to a maximum of two years. However, staff received this application to extend the completion of development by five years before the public notification of Council's intent to adopt the Centre Plan. Therefore, Council is not limited to consideration of a two-year maximum as part of this application. Any future extension requests will be limited to two years as set out in the Regional Centre Plan.

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 Halifax MPS.

Proposed Amending Development Agreement

Attachment A contains the proposed amending agreement for the subject site. The agreement extends the completion date by five years, reduces the minimum parking requirements and adjusts the size of parking stalls to align with requirements in the Centre Plan.

Both the parking changes and time extension can be considered by Community Council as non-substantive amendments as provided for in section 6.1.1 in the original development agreement. The proposal remains consistent with the policies in place at the time the development was approved. In addition, the parking changes align with Centre Plan policies around the size and number of parking stalls in multi-unit buildings.

Halifax Peninsula Planning Advisory Committee

On November 5, 2019, the Halifax Peninsula Planning Advisory Committee (PAC) reviewed the request to amend the existing development agreement. The Committee recommended Council approve the proposed parking changes and recommended the time extension be limited to the two years that is permitted under the Centre Plan. A report from the PAC to Community Council will be provided under separate cover.

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 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 Halifax and West 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. Halifax and West 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 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. Halifax and West 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 development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

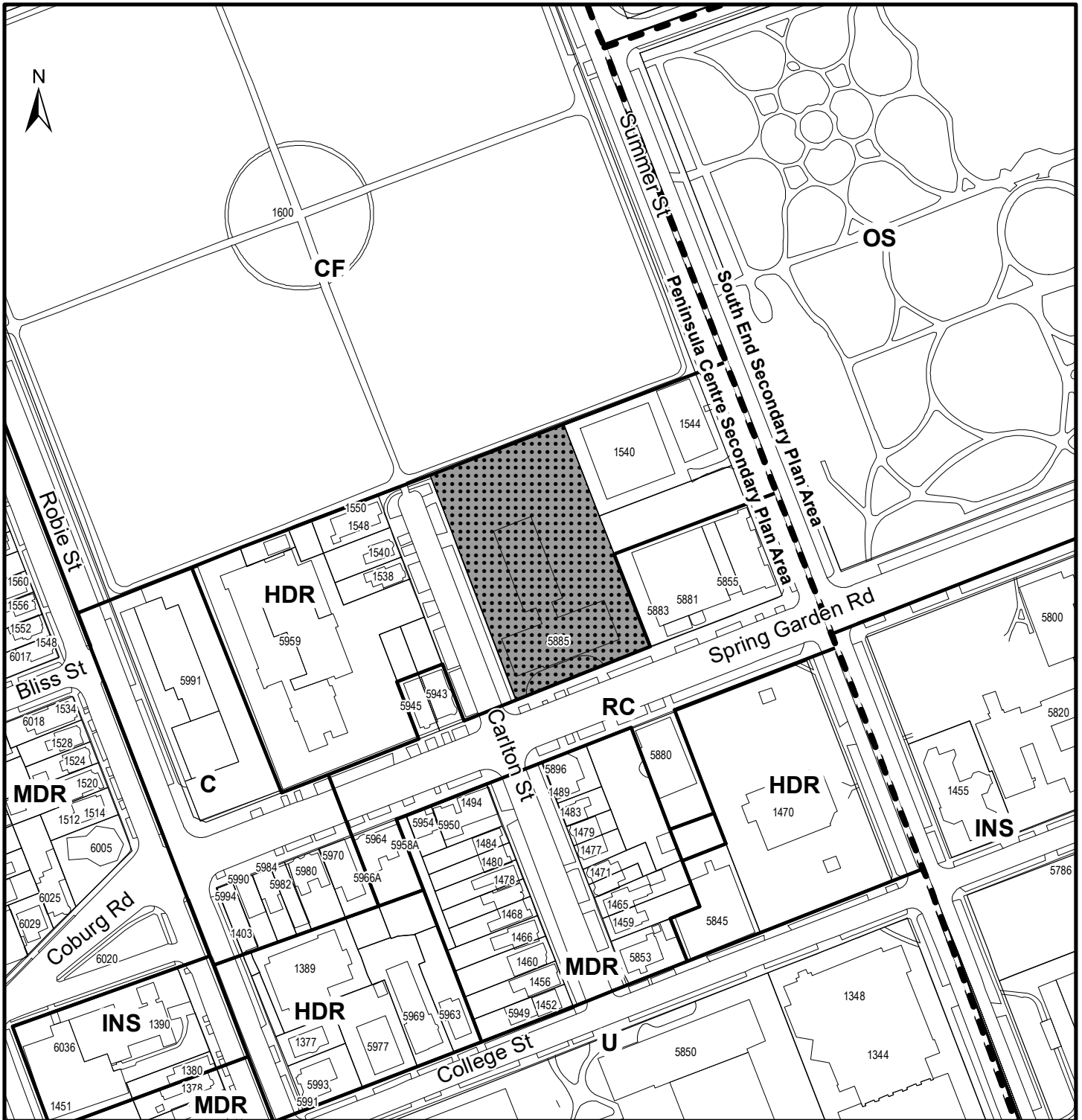
ATTACHMENTS

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

Attachment A: Proposed 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



Map 1 - Generalized Future Land Use

5885 Spring Garden Road
Halifax

 Subject Property

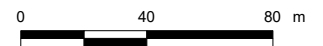
Halifax Peninsula Centre Designation

- C Commercial
- CF Community Facilities
- HDR High Density Residential
- INS Institutional
- MDR Medium Density Residential
- RC Residential - Commercial Mix
- U University

Halifax South End Designation

- INS Institutional
- OS Open Space

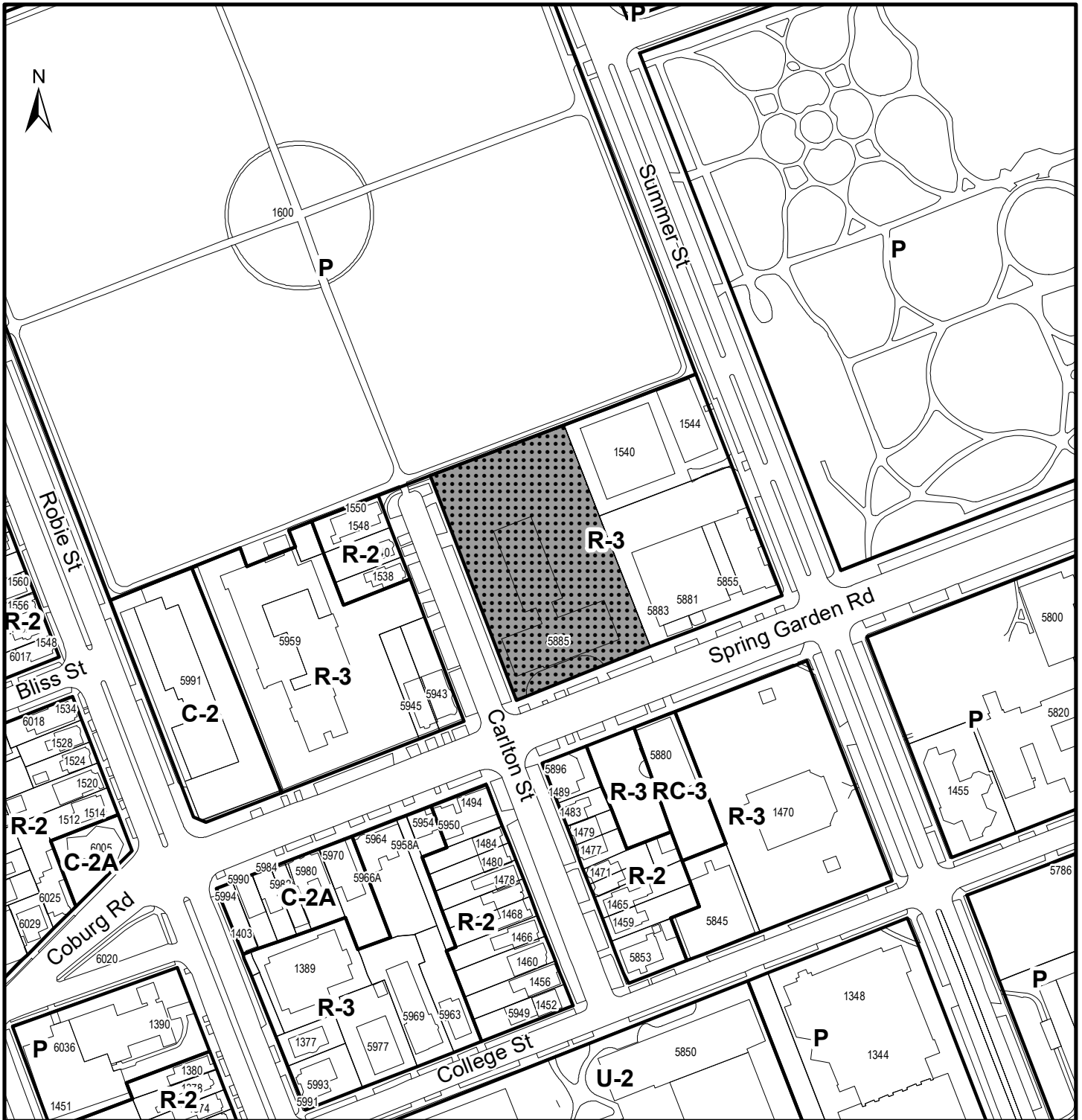
HALIFAX



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.

Halifax Plan Area,
Peninsula Centre Secondary Plan Area



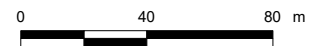
Map 2 - Zoning
 5885 Spring Garden Road
 Halifax

HALIFAX

 Subject Property

Zone

- C-2 General Business
- C-2A Minor Commercial
- P Park and Institutional
- R-2 General Residential
- R-3 Multiple Dwelling
- RC-3 High Density Residential Minor Commercial
- U-2 High-Density University



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.

Halifax Peninsula
 Land Use By-Law Area

Attachment A: Proposed Amending Development Agreement

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

BETWEEN:

[Insert Name of Registered Owner]

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 5885 Spring Garden Road, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Municipality entered into a development agreement to allow for two offices on the ground floor (municipal case 4205), the said development agreement was registered at the Registry of Deeds in Halifax on November 10, 1982 in Book 3624 at Pages 1095-1097(hereinafter called the "Original Agreement"), and which does not apply to the Lands;

AND WHEREAS the Municipality entered into a second development agreement to allow for a dental office in an existing apartment building (municipal case 00280), the said development agreement was registered at the Registry of Deeds in Halifax on March 8, 2001 as in Book 6717 at Pages 1026-1035 (hereinafter called the "Second Development Agreement"), and which does not apply to the Lands;

AND WHEREAS the Municipality discharged the Original Agreement and the Second Development Agreement on May 13, 2015 (municipal case 18270), and the discharging agreement was registered at the Registry of Deeds in Halifax on November 23, 2015 as Document 108139362;

AND WHEREAS the Municipality approved an application to enter into a new development agreement to allow for a mixed use residential and commercial building on the Lands on May 13, 2015 pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policy 8.1 of Section VI and Policy 3.11 of the Implementation Policies of the Municipal Planning Strategy for Halifax, and Section 95(1)(e) and (f) of the Land Use By-law for Halifax Peninsula (municipal case 18270), which said development agreement was registered at the Land Registration Office in Halifax on November 23, 2015 as Document Number 108139420 (hereinafter called the "Existing Agreement"), and which applies to the Lands;

AND WHEREAS the Developer has requested further amendments to the Existing Agreement to allow for changes to parking requirements and an extension to the completion date on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 8.1 of Section VI and Policy 3.11 of the Implementation Policies of the Halifax Municipal Planning Strategy, and Section 6.1.1 of the Existing Agreement;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 22436

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 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 First Amending Agreement, and the Existing Agreement.
3. Section 3.7 of the Existing Agreement shall be amended by deleting text shown in ~~strikeout~~, and inserting the text in bold as shown as follows:
 - 3.7.1 There shall be a of minimum of ~~230~~ **180** underground parking spaces.
 - ~~3.7.2 A minimum of 6 parking spaces shall be made available for the dental office-visitor parking.~~
 - ~~3.7.3 A minimum of 6 parking spaces shall be made available for visitor parking for the multiple unit building.~~
 - 3.7.2 Parking space sizes shall be 2.4 metres wide and 5.5 metres long.** ~~comply with the requirements of the Land Use By-law for Halifax Peninsula, as amended from time to time.~~
 - ~~3.7.35~~ The Developer shall provide 60 Class A bicycle parking spaces and 20 Class B bicycle parking spaces pursuant to the Land Use By-law for Halifax Peninsula.
 - ~~3.7.36~~ Access to the underground parking shall be accessed from Carlton Street as shown on Schedule B.
4. Section 7.5.1 of the Existing Agreement shall be amended by deleting text shown in ~~strikeout~~, and inserting the text in bold as shown as follows:
 - 7.5.1 If the Developer fails to complete the development after 5 years from the date of registration of this **First Amending** Agreement at the Registry of Deeds or Land Registration Office 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