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Halifax, Nova Scotia
B3J 3A5 Canada

Non-Substantive Amendment to a Development Agreement

TO: Development Officer

DATE: October 13, 2022

SUBJECT: **Case 24304: Non-Substantive Amendment to an existing Development Agreement for 2858-2866 Gottingen Street and 5516-5518 Macara Street, Halifax**

LEGISLATIVE AUTHORITY

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

Adoption or amendment of development agreement by policy 245

(3A) Notwithstanding subsections (1) to (3), a development officer may approve non-substantive amendments to a development agreement without holding a public hearing.

(3B) Subsection (3A) does not apply where amendments to a development agreement are a combination of substantive and non-substantive amendments.

RECOMMENDATION

It is recommended that the Development Officer:

1. Approve the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report.

BACKGROUND

Stephen Adams Consulting Services Inc., on behalf of the property owner, has applied for a non-substantive amendment to an existing development agreement for 2858-2866 Gottingen Street and 5516-5518 Macara Street, Halifax, to allow for five (5) additional dwelling units.

Subject Site	Three Properties: <ul style="list-style-type: none">• 2858 and 2860 Gottingen Street (PID 00127514)• 2866 Gottingen Street (PID 00127506)• 5516 and 5518 Macara Street (PID 00127498)
Location	Southeastern corner of Gottingen and Macara Streets
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	<ul style="list-style-type: none">• 2858 and 2860 Gottingen Street: Corridor Designation (COR)• 2866 Gottingen Street: Corridor Designation (COR)• 5516 and 5518 Macara Street: Established Residential (ER)
Zoning (Map 2)	<ul style="list-style-type: none">• 2858 and 2860 Gottingen Street: Corridor Zone (COR)• 2866 Gottingen Street: Corridor Zone (COR)• 5516 and 5518 Macara Street: Established Residential 3 (ER3)
Size of Site	1403 square metres (15,100 sq. ft.)
Street Frontage	Approximately 30.2 metres (100 ft.) of frontage on Gottingen Street and

	45.5 metres (149 ft.) of frontage on Macara Street
Current Land Use(s)	<ul style="list-style-type: none">• 2858 and 2860 Gottingen Street: a two-unit dwelling• 2866 Gottingen Street: a vacant commercial building to be demolished. It was a car garage and service station• 5516 and 5518 Macara Street: a two-unit dwelling
Surrounding Use(s)	<p>The surrounding area is a mix of commercial, residential, and institutional uses. Surrounding land uses include:</p> <ul style="list-style-type: none">• One 4-storey office building to the north;• Canadian Forces Base Stadacona to the east;• Vacant lands to the south, governed by a development agreement that allows for 8 storey mixed-use development;• Low to medium density residential dwellings to the west.

Proposal Details

The applicant is proposing to amend the existing development agreement to add five (5) more dwelling units for a total of seventy-one (71) units on the subject property. The additional units would be accommodated within the permitted building envelope. No other aspects of the development agreement are proposed to be changed.

History/Existing Development Agreement

- In May of 2017, Halifax and West Community Council approved an amendment to the Halifax Peninsula Land Use By-law (HPLUB) to apply Schedule Q to the subject site (case 20149). This amendment enabled a development agreement process to consider a proposed mixed-use development on the subject site.
- In October of 2017, Halifax and West Community Council enter into a development agreement to allow for an 8-storey residential building with ground floor commercial uses on the subject site (case 20149).
- The development agreement was amended in April 2022 to allow for a two (2) year extension to the dates of commencement and completion of the development (case 23936).

The original 2017 staff report, supplementary report and development agreement can be viewed here:
<https://www.halifax.ca/sites/default/files/documents/city-hall/community-councils/170530HWCC1011.pdf>

Enabling Policy and LUB Context

When the original development agreement was approved in 2017, the site was designated Major Commercial (MJC) under the Peninsula North Secondary Planning Strategy of the Halifax Municipal Planning Strategy (HMPS). The lands were zoned General Business (C-2) under the HPLUB. The Regional Centre Secondary Municipal Planning Strategy (RCSMPS) was adopted on November 21, 2021. At that time, 2858-2866 were re-designated COR and zoned COR, while 5516-5518 was re-designated ER and zoned ER3 within the Regional Centre Land Use By-law (RCLUB).

The original development agreement was enabled by Policy 2.3.1 of Section XI of the Halifax MPS, which allowed Community Council to identify areas designated Major Commercial for comprehensive site planning through the development agreement process. When the RCSMPS was adopted, the policies that enabled the existing development agreement were repealed. However, the Regional Center SMPS provided specific 'transition' policies that enable non-substantive amendments to approved development agreements. Specifically, Policy IM-33 enables applications for non-substantive amendments to existing development agreements to be considered under the policies at the time the agreement was approved.

This application is for a non-substantive amendment to an existing development agreement on the subject site. Therefore, according to Policy IM-33 of Regional Center SMPS, it is eligible to be reviewed under the policies in effect at the time the existing agreement was approved, which are Policies 2.3.1, 2.3.2, and 2.3.3. of Section XI of the Halifax MPS (Attachment B). Generally, these policies encourage commercial

and residential intensification in this area, in addition to encouraging development of new housing stock that appeals to all income levels.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it remains reasonably consistent with the intent of the Regional Centre SMPS and Halifax MPS policies that were in place at the time the existing development agreement was approved. Attachment B provides an evaluation of the request in relation to the relevant MPS policies.

Proposed Non-substantive Amendment to the Development Agreement

Attachment A contains the proposed non-substantive amendment to the existing development agreement. The proposed change relates only to the proposed number of residential units and the rest of the development agreement will be unchanged.

The increase in the number of residential units can be permitted as a non-substantive amendment pursuant to section 6.1.1 (a) of the existing development agreement approved in 2017. Section IM-33 of the Regional Centre SMPS enables the application to be considered against the enabling policies in effect at the time the original agreement was approved. These enabling policies are 2.3.1, 2.3.2, and 2.3.3 of Section XI of the HMPS, which were appealed when Regional Centre SMPS was adopted. The proposal remains reasonably consistent with the enabling policies that were in effect at the time the original agreement was approved.

Traffic and Parking

Under the existing development agreement application, a Traffic Impact Statement (TIS) was prepared by a Professional Engineer, taking other approved developments within the area into account. The TIS concludes that the proposed development is not expected to have any significant impact on the level of performance of either fronting street, adjacent intersections, or the regional street network. The TIS further concludes that the net additional trips generated by the development are not expected to have any significant cumulative effect on the traffic operations of local intersections or streets, or the regional street network. It was reviewed by engineering staff and determined to be acceptable. These original findings and conclusions are not expected to be altered by the proposed non-substantive amendment which adds 5 additional units.

As part of the application package, the applicant also submitted underground parking floor plans. This level of detail was not part of the original schedules in the existing development agreement. The newly submitted parking floor plans were reviewed by development officers, and the changes proposed by the applicant were deemed permitted within the scope of the existing development agreement.

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.

From May 19, 2022, when the case webpage was published, to September 9, 2022, the case webpage received 197 unique pageviews. Average time spent on viewing this application page is 3 min 6 seconds. There were no public comments received on this application.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. The proposed amendment is to add additional five (5) residential units for a total of seventy-one (71) units. Other aspects of the existing development agreement, including the architecture, landscaping, and general land use of the structure are unchanged from that

which is set out in the existing development agreement. In general, the proposed amendment will have minimal impacts on the surrounding neighborhood. Therefore, staff recommend that Development Officer approve the proposed amending development agreement.

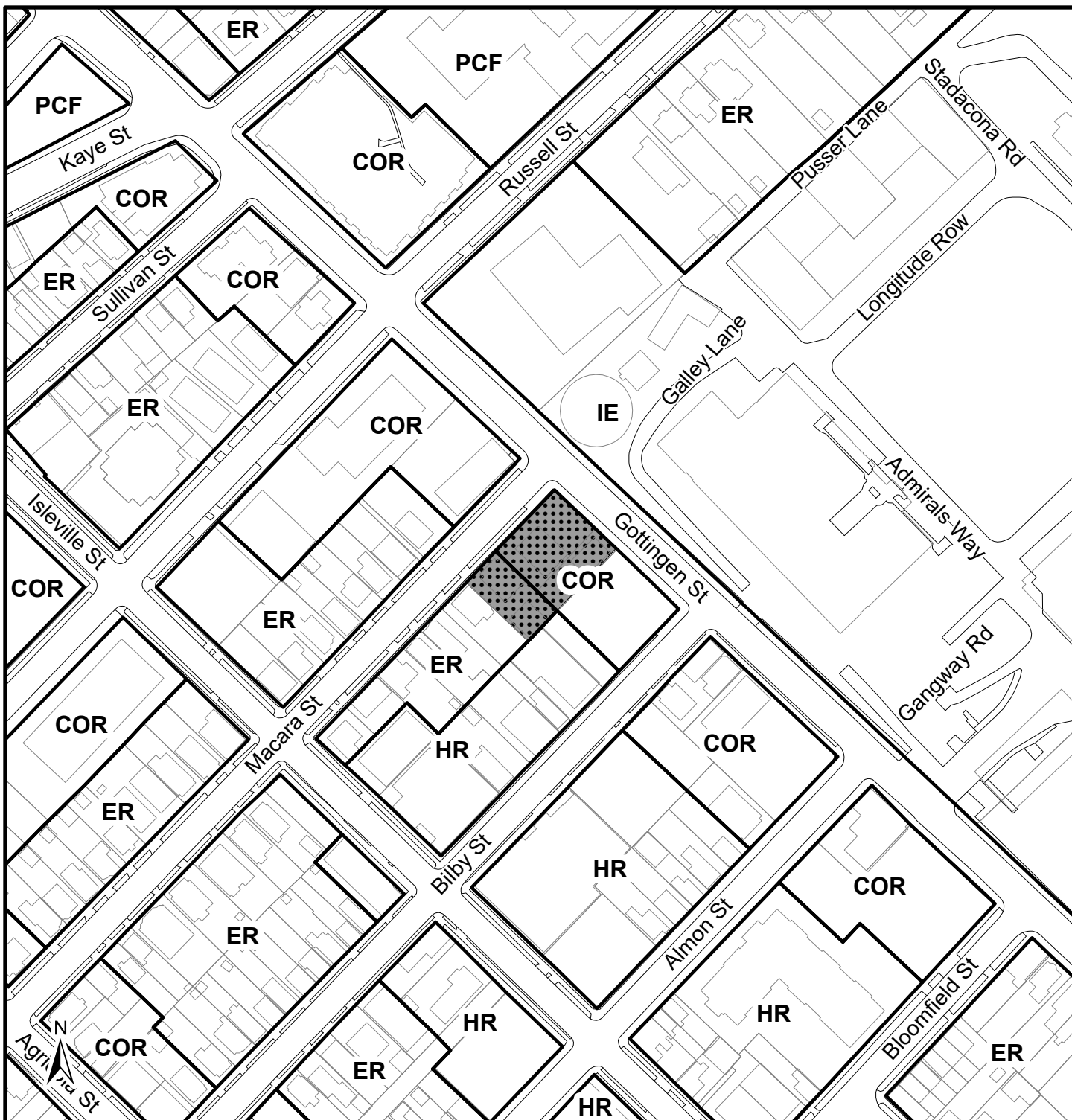
ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning Map
Attachment A	Proposed Amending Development Agreement
Attachment B	Review of Relevant policies from Halifax MPS and Regional Centre SMPS

Report Prepared by: Yanan Gou, Planner II, 782.641.5657

Development Officers Decision

HALIFAX REGIONAL MUNICIPALITY	
Non-Substantive Development Agreement Is APPROVED for	
Details:	Non-Substantive for additional units
Date:	Original Signed
	Stephanie Norman
	endorsed by Development Officer Name



Map 1 - Generalized Future Land Use

2858-2866 Gottingen Street,
5516-5518 Macara Street,
Halifax

 Subject Property

Designation Regional Centre

CEN	Centre
COR	Corridor
ER	Established Residential
HR	Higher-Order Residential
IE	Industrial Employment
PCF	Park and Community Facility

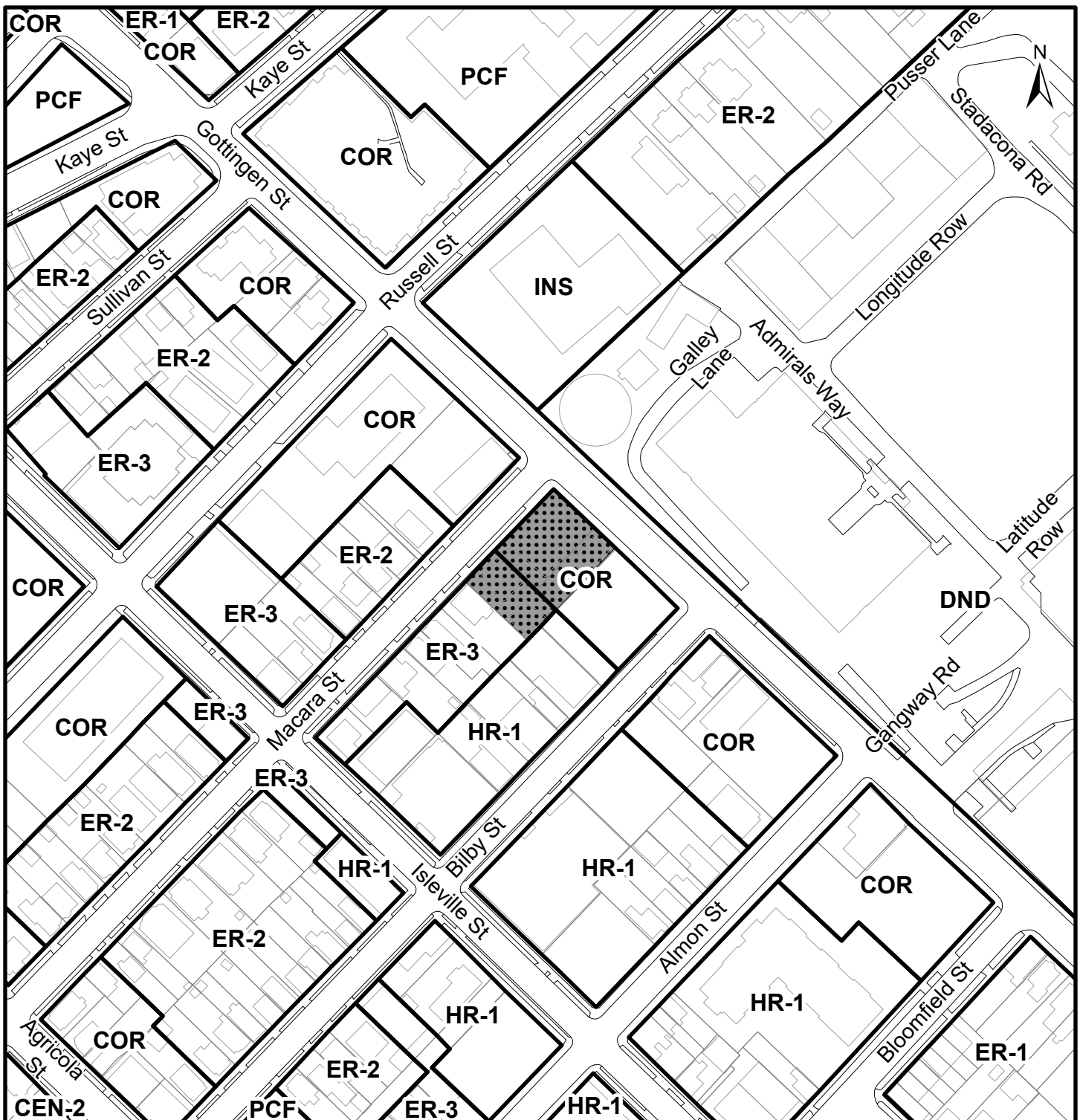
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This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Regional Centre
Land Use By-Law Area



Map 2 - Zoning and Notification Area

2858-2866 Gottingen Street,
5516-5518 Macara Street,
Halifax

 Subject Property

Regional Centre
Land Use By-Law Area

Zone Regional Centre

CEN-2	Centre-2
COR	Corridor
DND	Department of National Defense
ER-1	Established Residential 1
ER-2	Established Residential 2
ER-3	Established Residential 3
HR-1	Higher-Order Residential 1
INS	Institutional
PCF	Parks and Community Facilities

HALIFAX

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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 Amending Development Agreement

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

BETWEEN:

F.M. PROPERTIES LIMITED

a body corporate, in the Province of Nova Scotia

-and-

FH DEVELOPMENT GROUP INC.

a body corporate, in the Province of Nova Scotia

(hereinafter collectively 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 2858, 2860, and 2866 Gottingen Street and 5516 and 5518 Macara Street, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on October 10, 2017 Halifax and West Community Council approved an application to enter into a Development Agreement to allow for a mixed-use development on the Lands (municipal case 20149), which said Development Agreement was registered at the Land Registration Office in Halifax on December 11, 2017 as Document Number 111867025 (hereinafter called the "Original Agreement");

AND WHEREAS on February 22, 2022, the Halifax and West Community Council approved an application to amend the Original Development Agreement to allow for a two (2) year extension to the date of commencement and a two (2) year extension to the date of completion of development, pursuant to the provisions of the *Halifax Regional Municipality Charter*, referenced as municipal case 23936, and which said Amending Development Agreement was registered at the Land Registry Office in Halifax on April 28, 2022 as Document 120500112 (hereinafter called the "First Amending Agreement"), and which applies to the Lands;

AND WHEREAS the Original Agreement and the First Amending Agreement together comprise the Existing Development Agreement (hereinafter called "the Existing Agreement");

AND WHEREAS the Developer has requested an amendment to the Existing Development Agreement to allow for additional five (5) residential units on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy IM-33 of the Regional Centre Secondary Municipal Planning Strategy, Policies 2.3.1, 2.3.2, and 2.3.3. of

Section XI of the Halifax Municipal Planning Strategy, Section 92 of the Halifax Peninsula Land Use By-law, and Section 6.1 of the Existing Agreement;

AND WHEREAS in accordance with subsection 245(3A) of the *Halifax Regional Municipality Charter* a Development Officer may approve non-substantive amendments to a Development Agreement;

AND WHEREAS [insert name], Development Officer, approved this request for non-substantive amendments, referenced as municipal case 24304;

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 Second 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 Second Amending Agreement, and the Existing Agreement.
3. Clause 3.4.1(b) of the Existing Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold:
 - (b) A maximum of ~~66~~ **71** residential units with the following unit breakdown:
 - (i) A minimum of 3 three-bedroom units including 2 two-level townhouse units on Macara Street;
 - (ii) A minimum of 19 two-bedroom units;
 - (iii) A maximum of 30 one-bedroom units; and
 - (iv) A maximum of 15 studio units.

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:

F.M. Properties Limited

Witness

Per: _____

Name: _____

Position: _____

Date signed: _____

FH DEVELOPMENT GROUP INC.

Witness

Per: _____

Name: _____

Position: _____

Date signed: _____

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

HALIFAX REGIONAL MUNICIPALITY

Per: _____

MAYOR

Date signed: _____

Witness

Per: _____

MUNICIPAL CLERK

Date signed: _____

Witness

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 Policies from the Halifax MPS and the Regional Centre SMPS

Regional Centre Secondary Municipal Planning Strategy	
Part 9: Implementation	
Policy	Staff Comments
<p>Policy IM-33 Applications for non-substantive amendments to existing development agreements shall be considered under the policies in effect at the time the agreement was approved.</p> <p>Applications for substantive amendments to existing development agreements may be considered under the policies in effect at the time the agreement was approved for the following matters:</p> <ul style="list-style-type: none"> (a) changes to architectural requirements; (b) changes to landscaping requirements; (c) changes to sign requirements; (d) reduction in motor vehicle parking requirements; and (e) changes to building lighting and illumination. 	<p>This application is for a non-substantive amendment to an existing development Agreement. Therefore, it is eligible to be reviewed under the policies in effect at the time the original agreement was approved.</p> <p>Section 6.1 of the existing development agreement (case 20149) lists items considered as non-substantive amendments. Specifically, the following item applies to the request: An increase in the total number of permitted dwelling units within the building envelope of not more than 6 units for a maximum of 72 units.</p>

Halifax Municipal Planning Strategy	
Section XI - Peninsula North Secondary Planning Strategy	
Commercial Facilities – Policy 2.3.1, 2.3.2 & 2.3.3 <i>Objective: A variety of appropriately located commercial facilities to serve the needs of both the resident and working populations of Peninsula North and the City as a whole.</i>	
Policy	Staff Comments
<p>Policy 2.3.1 In order to promote investment in commercial and residential redevelopment and to prevent conflict between new and existing uses the city may, through the land use by-law, identify areas that provide an opportunity for and will benefit from comprehensive site planning;</p>	<p>The surrounding neighbourhood consists of a mixture of uses including residential, commercial, and institutional of varying intensities. There is an opportunity for comprehensive site planning by introducing a mixed-use project to the site, as well as built form and design requirements, to ensure a design that is suitable and compatible with the area.</p> <p>The development agreement process can alleviate potential land use conflicts through mitigation measures implemented by land use, design, and built form requirements.</p>

<p>Policy 2.3.2 In those areas identified in the land use by-law pursuant to Policy 2.3.1 all residential and mixed residential-commercial development over four units shall be by agreement.</p>	<p>The proposal is for an 8-storey residential building containing ground floor commercial uses. The proposed development presents an appropriate and beneficial opportunity for comprehensive site planning.</p>
<p>Policy 2.3.3 <i>In considering agreements pursuant to Policy 2.3.2, Council shall consider the following:</i></p>	
<p>(i) the relationship of new development to adjacent properties and uses; and, the mitigation of impacts on the amenity, convenience and development potential of adjacent properties through effective urban design and landscape treatment;</p>	<p>The immediate neighbourhood contains a mix of land use (see Staff Report).</p> <p>Substantial building heights and massing are achievable through the as-of-right permitting process in the major commercial portion of this area (C-2 Zone). However, the proposed building's height and mass is less than that which could be achieved in an as-of right commercial situation.</p> <p>An at-grade setback and substantial stepback above the 1st floor is provided in order to mitigate impacts on an abutting single unit dwelling. Effective urban design treatment is created by a two storey streetwall along Gottingen Street and much of Macara Street, while upper floors are stepped back from internal property lines.</p> <p>To minimize potential land use conflicts, the development agreement restricts land uses on the ground floor to select minor commercial uses, and a lounge in association with a restaurant. Hours of operation for a restaurant/lounge have also been restricted to midnight. The nature of the building's noncombustible construction materials will also assist with noise attenuation. Signs are limited to fascia signs at select locations, with additional limitations on size.</p> <p>The proposed amendment would not change any of this.</p>
<p>(ii) the appropriate integration of the development into the traditional grid street system of the Peninsula</p>	<p>The site fronts Gottingen Street and Macara Street. The approved development integrates with the existing street grid. The proposed amendment would not change this.</p>
<p>(iii) the design and layout of the development should encourage vehicular traffic to use Principal Streets and discourage traffic from infiltrating through existing neighbourhoods;</p>	<p>The entrance to the proposed parking garage is located off Macara Street, which is not a Principal Street while Gottingen Street is a Principal Street. However, Bylaw S-300 (The Streets Bylaw)</p>

	<p>discourages driveway access off a principal street where access off a secondary street is possible.</p> <p>A Traffic Impact Statement, prepared by the applicant's consultant, was reviewed by HRM and was deemed acceptable. The Study concludes that there are no issues with the proposed development on the local street network. All parking is to be located within the building. The proposed amendment (additional 5 units) is expected to have minimal impact on this.</p>
(iv) the creation of high quality design detail at street level through attention to such matters as landscaping, signs, building entrances, and vehicle layby areas;	The design of the buildings at street level provides a fine-grained pedestrian-oriented frontage through the use of small storefronts on Gottingen Street and individual townhouses with private entrances on Macara Street. The approved agreement requires adherence to detailed landscaping requirements, which includes the provision of new street trees along each frontage. Signs are limited to fascia signs at select locations, with additional limitations on size. The proposed amendment would not change this.
(v) the provision of high quality open space and leisure areas of a size and type adequate for the resident population;	Open space and leisure areas consist of the common rooftop landscaped area, landscaped terraces, balconies, and common indoor amenity space. These spaces/areas will be adequate for the resident population. Provisions in the approved agreement ensure the use of high-quality materials and landscape design. The proposed amendment would not change this.
(vi) residential and commercial densities consistent with municipal services;	With respect to municipal wastewater services, Halifax Water has no concerns identified at this time. Halifax Water requires evidence of wastewater capacity at the time of connection (at the building permit stage).
(vii) encouraging high quality exterior construction materials such as masonry; and	Proposed exterior materials are of high quality and include brick, stone, glass, composite panels, and metal/glass railings. The proposed amendment would not change this.
(viii) other relevant land use considerations which are based on the policy guidance of this Section.	None identified.