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Halifax, Nova Scotia  
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**Item No. 13.1.3**  
**Harbour East – Marine Drive Community Council**  
**May 4, 2017**

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

**SUBMITTED BY:** ORIGINAL SIGNED

\_\_\_\_\_  
Bob Bjerke, Chief Planner and Director, Planning and Development

**DATE:** March 24, 2017

**SUBJECT:** **Case 20260: Non-Substantive Amendments to the Development Agreement for Evergreen Drive, Cole Harbour**

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**SUPPLEMENTARY REPORT**

**ORIGIN**

- Application by EastPoint Engineering Ltd.
- On August 4, 2016 Harbour East – Marine Drive Community Council approved, by resolution, a Second Amending Agreement to enable an extension of the date of commencement of development for one year to allow the development of 8 townhouse units in Phase 2 to occur without the need for a non-substantive amendment at Evergreen Drive, Cole Harbour.

**LEGISLATIVE AUTHORITY**

See Attachment A.

**RECOMMENDATION**

It is recommended that Harbour East – Marine Drive Community Council:

1. Approve the proposed second amending development agreement, which shall be substantially of the same form as set out in Attachment B, to enable an extension of the date of commencement of development, and allow the development of the 8 townhouse units in Phase 2 to occur without the need for a non-substantive amendment at Evergreen Drive, Cole Harbour; and
2. Require that the second 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 / DISCUSSION**

On August 4, 2016, Harbour East Marine Drive Community Council approved, by resolution, a second amendment to the Evergreen Drive development agreement to enable an extension of the date of commencement of development for one year. This approval also removed a previous phasing requirement established to ensure appropriate water and sewer services were available for the 8 townhouse units. However, following the approval by Council, staff recognized an error in the Second Amending Agreement relative to the commencement dates included in the July 7, 2016 staff report.

Staff originally recommended a 3 year extension to the date of commencement be granted. Community Council in their decision decided instead to amend the approval to a 1 year extension. This 1 additional year was approved at the August 4, 2016 meeting. Due to the nature of the wording of the existing development agreement in combination with the wording of the amended Council motion, Council unknowingly granted the applicant an extension of 1 year from the date commencement referenced in the existing agreement. This date was January 1, 2016.

This resulted in a situation where the applicant was given only an additional 5 months, as opposed to the 12 months Council may have intended (ie: from August 4, 2016 to January 1, 2017). As a result, the Second Amending Agreement was not signed nor registered, and development was not able to commence.

For further clarification, please see the table below:

Original DA	Approval Date	Section 8.3.1	
Case 01145	Dec. 4, 2008 (registered March 31, 2009)	In the event that development has not commenced within <b>five (5) years from the date of registration of this Agreement at the Registry of Deeds</b> , 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.	
Amendment	Approval Date	Proposal	Consolidation
Case 19545 1 <sup>st</sup> Amending Agreement	Nov.13, 2014 (registered February 19, 2015)	Section 8.3.1 of the Existing Agreement shall be amended by deleting the words "within five (5) years from the date of registration of this Agreement at the Registry of Deeds" and be replaced with the words "by January 1, 2016".	In the event that development has not commenced by January 1, 2016, 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.
Case 20260 2 <sup>nd</sup> Amending Agreement	Aug. 4, 2016 <i>(not signed or registered)</i>	Section 8.3.1 of the Existing Agreement shall be amended by deleting the word and number "five (5)" from section 8.3.1 and replacing it with the new word and number "nine (9)".  However, Council did not approve the staff recommendation, and instead passed the following motion:	<i>This amendment was proposed in the staff report for case 20260 (July 7, 2016), however the word and number "five (5)" no longer exist as they had been removed during the Frist Amending Agreement.</i>  <i>Furthermore, Council passed a motion to approve an extension of one year only. It is assumed that the intention of Council's motion was to permit an extension of one year from the date of approval. However, it was</i>

		“Approve, by resolution, the proposed Second Amending Agreement [...] to enable an extension of the date of commencement of development for one year...”	<i>determined that the one year extension would start from the date permitted under the First Amending Agreement, which is January 1, 2016.</i>
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While a previous extension to the development agreement for Evergreen Drive had been granted in the past, this most recent request for a time extension has been made subsequent to a change in ownership of the subject property. The new owner is eager to start development at this site; however, the error in the July 7, 2016 staff report has hindered the commencement of development. Staff have since revised the text of the proposed Second Amending Agreement as set out in Attachment B of this report for Council's consideration. The revisions enable development to commence within one year of the registration of the Second Amending Agreement and clarify the intent of the proposal. Additionally, staff have removed the requirement for phasing of the project as it has since been determined that there are adequate sewer and water services available for the development. This amendment is identical to the one approved by Community Council in August of 2016, however the agreement was never registered to title.

### **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 prior to approval of the original agreement through a Public Information Meeting held on June 2, 2008 and a Public Hearing held on November 6, 2008. Furthermore, information about the current proposal was available through the HRM website. Given the agreement identifies construction commencement and a request for up to eight (8) additional townhouse units as non-substantive matters, a public hearing is not required. The decision is made by resolution of Council. In the event that Council approves the proposed amending development agreement, a notice will be placed in the Chronicle Herald setting out the right to appeal.

The proposed amending development agreement will potentially impact the following stakeholders: local residents and property owners.

### **FINANCIAL IMPLICATIONS**

There are no financial 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 development agreement. The administration of the development agreement can be carried out within the approved 2016/17 budget 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 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. Harbour East – Marine Drive Community Council may choose to refuse the proposed 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	Generalised Future Land Use
Map 2	Zoning
Attachment A	Legislative Authority
Attachment B	Proposed Second Amending Development Agreement

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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

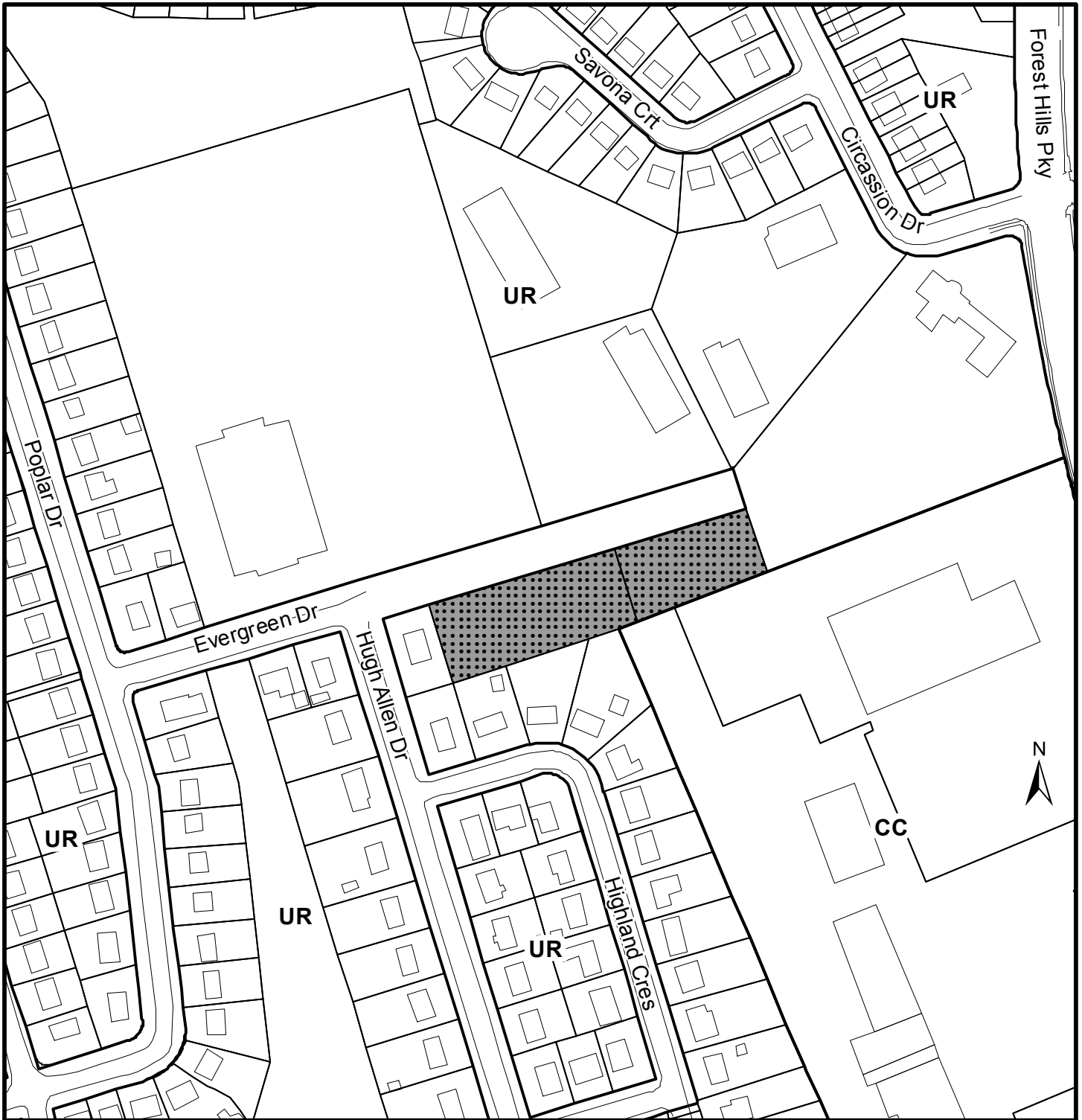
Report Prepared by: Stephanie Salloum, Planner II, Current Planning, 902-490-4223  
Maggie Holm, Principal Planner – Urban Enabled Planning Applications, 902-293-9496

Report Approved by: ORIGINAL SIGNED  

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Carl Purvis, Acting Manager, Current Planning, 902.490.4797


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**Map 1 - Generalized Future Land Use**

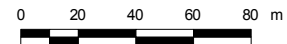
PID 00398552  
and 40414633



 Existing Development Agreement

**Designation**

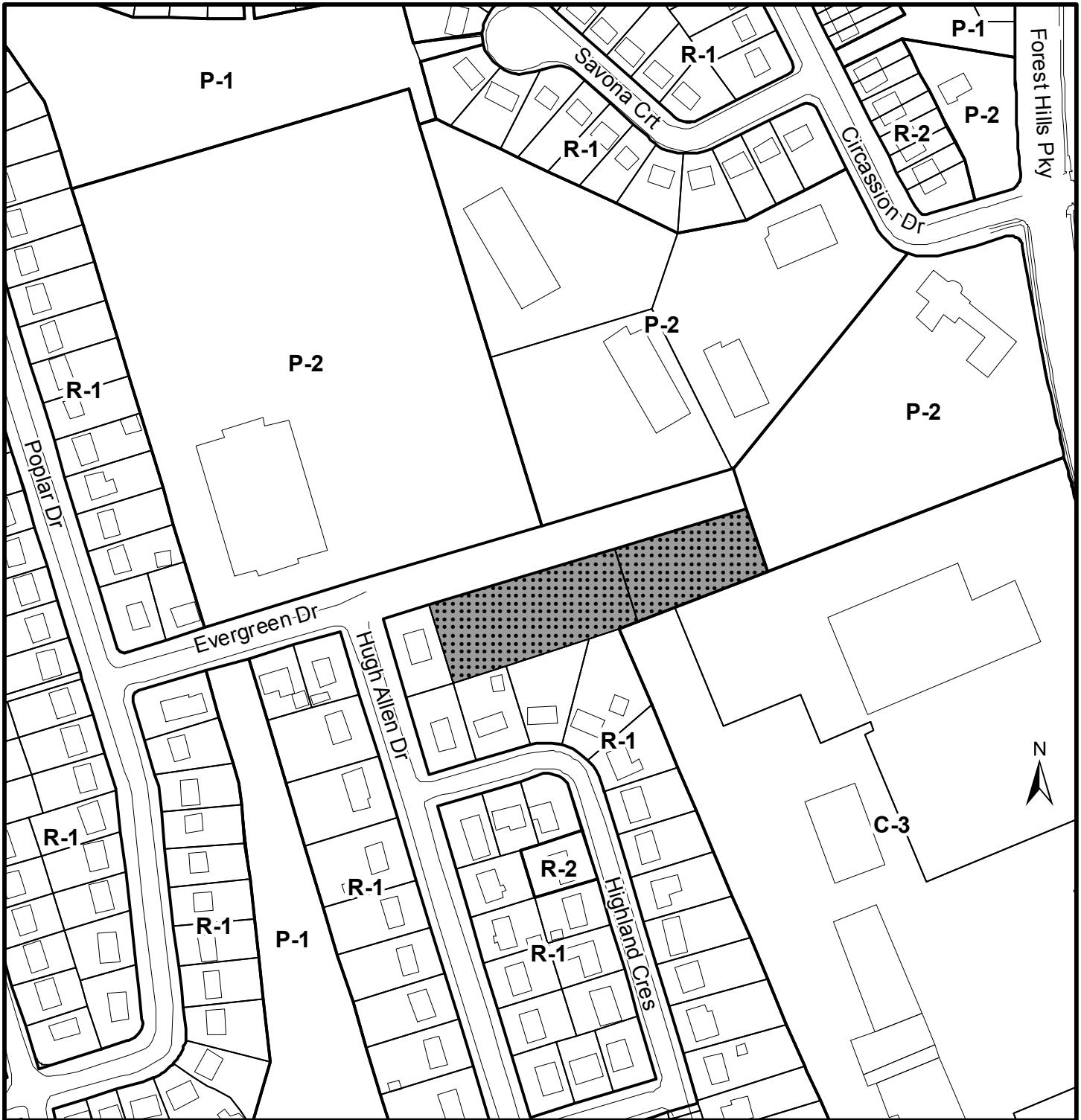
UR Urban Residential  
CC Community Commercial



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**

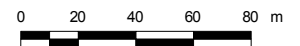
PID 00398552  
and 40414633

**HALIFAX**

 Existing Development Agreement

**Zone**

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- C-3 Shopping Centre
- P-1 Open Space
- P-2 Community Facility



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  
Plan Area

## Attachment A – Legislative Authority

### Development Agreements By Community Council

The *Community Council Administrative Order*, subsection 3 (1) “Subject to subsection (3) of this section, sections 29, 30 and 31 of the *Halifax Regional Municipality Charter* apply to each Community Council.”

*Halifax Regional Municipality Charter*.

#### **Development agreements by community councils**

- 31 (1)** This Section applies to a community council if the Council so provides in the policy establishing the community council.
- (2)** Where a municipal planning strategy of the Municipality provides for development by agreement, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.
- (3)** A development agreement, or amendment to a development agreement, entered into by a community council must be signed by the Mayor and the Clerk on behalf of the Municipality.
- (4)** Where a development agreement entered into by a community council purports to commit the Municipality to an expenditure, the commitment has no force or effect until approved by the Council. 2008, c. 39, s. 31.

*HRM Charter*, Part VIII, Planning and Development, including:

#### **Development agreements**

- 240 (1)** The Council may consider development by development agreement where a municipal planning strategy identifies
- (a) the developments that are subject to a development agreement;
  - (b) the area or areas where the developments may be located; and
  - (c) the matters that the Council must consider prior to the approval of a development agreement.
- (2)** The land-use by-law must identify the developments to be considered by development agreement. 2008, c. 39, s. 240.

#### **Content of development agreements**

- 242 (1)** A development agreement may contain terms with respect to
- (a) matters that a land-use by-law may contain;
  - (b) hours of operation;
  - (c) maintenance of the development;
  - (d) easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;
  - (e) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;
  - (f) the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;
  - (g) the subdivision of land;
  - (h) security or performance bonding.
- (2)** A development agreement may include plans or maps.
- (3)** A development agreement may
- (a) identify matters that are not substantive or, alternatively, identify matters that are substantive;
  - (b) identify whether the variance provisions are to apply to the development agreement;

## Attachment A – Legislative Authority

- (c) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;
- (d) provide that upon the completion of the development or phases of the development, the development agreement, or portions of it, may be discharged by the Council;
- (e) provide that, where the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by the Council without the concurrence of the property owner. 2008, c. 39, s. 242.

### Requirements for effective development agreement

- 243**
- (1)** A development agreement must not be entered into until
    - (a) the appeal period has elapsed and no appeal has been commenced; or
    - (b) all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board.
  - (2)** The Council may stipulate that a development agreement must be signed by the property owner within a specified period of time.
  - (3)** A development agreement does not come into effect until
    - (a) the appeal period has elapsed and no appeal has been commenced or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board;
    - (b) the development agreement is signed by the property owner, within the specified period of time, if any, and the Municipality; and
    - (c) the development agreement is filed by the Municipality in the registry.
  - (4)** The Clerk shall file every development agreement, amendment to a development agreement and discharge of a development agreement in the registry. 2008, c. 39, s. 243.





AND WHEREAS WHEREAS the Harbour East-Marine Drive Community Council for the Halifax Regional Municipality approved this request at a meeting held on August 4, 2016, referenced as Municipal Case Number 20260;

AND WHEREAS the Second Amending Agreement was not executed nor was it registered on the title of the lands;

AND WHEREAS the request originally made within Municipal Case Number 20260 is being put forward again with a revised second amending agreement;

AND WHEREAS the Harbour East-Marine Drive Community Council for the Halifax Regional Municipality approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 20260;

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 terms conditions and provisions of the Original Agreement, as amended, shall remain in effect.
2. Section 3.2.5 of the Original Agreement, as amended, shall be deleted.
3. Section 3.3(a) of the Original Agreement, as amended, shall be amended by adding “and a maximum of 8 additional dwelling units within the area identified on Schedule B as Phase 2” as shown in bold below:
  - 3.3(a) A townhouse development consisting of a maximum of 8 dwelling units within the area identified on Schedule B as Phase I **and a maximum of 8 additional dwelling units within the area identified on Schedule B as Phase 2;**
4. Sections 3.3(b) and 3.3(c) of the Original Agreement, as amended, shall be deleted.
5. Section 3.4.2(b) of the Original Agreement, as amended, shall be amended by deleting the words “a shared private driveway that meets” in Section 3.4.2(b) and replacing them with the words “shared private driveways that meet” as shown in strikeout and bold below:
  - 3.4.2(b) The minimum lot frontage requirements shall be waived provided that no more than 8 dwelling units are located within each phase and access to each phase is provided via ~~a shared private driveway that meets~~ **shared private driveways that meet** all applicable standards and specifications for a commercial driveway in the opinion of the Development Engineer.
6. Section 6.2(c) of the Original Agreement, as amended, shall be deleted.
7. Section 8.3.1 of the Original Agreement, as amended, shall be amended by deleting the words “by January 1, 2016” and replacing them with “within one (1) year from the date of registration of the Second Amending Agreement at the Registry of Deeds” as shown in strikeout and bold below:

8.3.1 In the event that development has not commenced by ~~January 1, 2016~~ **within one (1) year from the date of registration of the Second Amending Agreement at the 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 WHEREOF** 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 Owners Names)**

\_\_\_\_\_

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

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

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**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_

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

Mayor

\_\_\_\_\_

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

Municipal Clerk