



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

Item No. 13.1.3
Harbour East Marine Drive Community Council
July 5, 2018

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

SUBMITTED BY: Original Signed

Kelly Denty, Director, Planning and Development

Original Signed

Jacques Dube, Chief Administrative Officer

DATE: June 20, 2018

SUBJECT: **Case 21546: Non-substantive amendments to an existing development agreement at 3 Bartlin Road, Dartmouth**

ORIGIN

Application by Twin Lakes Development Ltd. to amend the development agreement for lands at 3 Bartlin Road, Dartmouth regarding project commencement dates.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

Further to the direction provided by the former Harbour East Community Council at their July 6, 2006 meeting, the motion for consideration is that Harbour East - Marine Drive Community Council:

1. 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 to amend the development agreement for lands at 3 Bartlin Road, Dartmouth regarding project commencement dates.
2. Require the amending agreement be signed by the property owners 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

Twin Lakes Development Ltd. has applied for a non-substantive amendment to an existing development agreement to allow a time extension of the construction commencement date for a multiple unit dwelling at 3 Bartlin Road, Dartmouth.

Subject Site	3 Bartlin Road, Dartmouth
Location	Between Prince Albert Road and Alderney Elementary School
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	Commercial and Residential under the Dartmouth Municipal Planning Strategy (MPS)
Zoning (Map 2)	C-2 (General Business) Zone and R-3 (Multiple Family Dwelling) Zone (formally zoned R-2) under the Dartmouth Land Use Bylaw (LUB)
Size of Site	10,469.8 square metres (112,696 square feet)
Street Frontage	28.42 metres (93.24 feet)
Current Land Use(s)	Single unit dwelling
Surrounding Use(s)	A mixture of land uses exists in the area, including: <ul style="list-style-type: none">• commercial buildings;• an elementary school;• single and semi-detached housing;• and multi-unit residential buildings.

Original Approval

On July 6, 2006, the former Harbour East Community Council approved a rezoning and development agreement with Twin Lakes Development Ltd. for a twelve-storey multiple unit dwelling at 3 Bartlin Road, Dartmouth. The agreement allows a twelve-storey multiple unit dwelling with a maximum density of eighty-four (84) residential units in accordance with the R-3 Zone of the Dartmouth LUB. Section 5.6 of the development agreement stipulates that construction must commence within five (5) years from the date of registration, establishing a commencement date of April 23, 2018.

Proposal Details

The applicant proposes to amend the existing development agreement to allow a 2-year time extension for construction commencement. The applicant has indicated an intention to redevelop the adjacent property at 327 Prince Albert Road as a mixed-use project under the proposed Centre Plan. Their preference would be to develop both sites simultaneously to reduce construction costs. As the development of 327 Prince Albert Road is intended as an as-of-right process under the proposed Centre Plan polices, the time extension is requested to account for the time it may take for the Centre Plan to be adopted and to allow the applicant time to create a development application under potential new policies.

Enabling Policy Context

Policies IP-1(b), IP-1(c), and IP-5 of the Dartmouth MPS allow the rezoning to the R-3 Zone and require a development agreement for any multiple unit dwelling of three or more units. This is the policy framework under which the agreement was considered and approved in 2006. These policies remain unchanged today and they apply to the request for an amendment to the existing agreement.

Additionally, Section 4.1(c) of the existing development agreement identifies “changes to the time frames for commencement and/or completion of the development” as a non-substantive amendment.

COMMUNITY ENGAGEMENT

The community engagement process on this file has been consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through providing information 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, and the decision on the amendments is made by resolution of Council.

DISCUSSION

Original Review Process

On July 6, 2006, when the original application (Case 00784) was before Community Council, staff recommended refusal of the proposal. The rationale for this recommendation was that the building height and scale were not compatible with the adjacent two to four storey buildings [Dartmouth MPS Policy IP5-(b) i]. The difference in height between the proposed building and adjacent buildings (8 storeys) is further accentuated by the location of the proposed building which is at a significantly higher grade than the existing development. At that time, staff advised that it would have been preferable for the building to be sited so that existing lower scaled land forms were used as a backdrop to the structure. This would have resulted in a six to seven storey building.

During the 2006 public hearing for the proposal, all speakers but one were in favour of the development and a petition was submitted on behalf of residents in the area in support of the proposed development. Council concluded that the development was reasonably consistent with the intent of the Municipal Planning Strategy, and approved the development agreement. The staff report and minutes of the July 6, 2006 Community Council can be found by following the links below.

Case 00784 Staff Report: <http://legacycontent.halifax.ca/commcoun/hecc/documents/Case784Jul6.pdf>

Community Council Minutes: <http://legacycontent.halifax.ca/commcoun/hecc/documents/060706.pdf>

Extended Document Registration Timing

Prior to the Community Council approval, the developer was in the process of acquiring additional lands for the proposed development, some of which were owned by HRM. Additional time was provided to allow completion of this process via a time extension request considered by Council in January, 2007 and the developer was not required to sign the development agreement until 120 days after completion of all required land acquisitions. The various processes required to complete the transactions were not concluded until 2013. The development agreement was signed and registered on April 23, 2013 resulting in a commencement deadline of April 23, 2018.

Timing Obligations

Development agreements have mandatory commencement and completion dates to allow Council and property owners the opportunity to re-evaluate the agreement within a specified amount of time after its initial approval. This process allows Council to reconsider a project in the context of changes in development policies that may have taken place since the original approval. Furthermore, even if relevant policies may not have changed in that time frame, the context within which those policies are applied may have changed as a result of alterations to the surrounding neighbourhoods or market conditions.

Community Input

Since 2006, a significant amount of public consultation has been completed with the broad community regarding what it considers suitable development for the area. The most extensive consultation being the public engagement completed for the development of the Centre Plan. The analysis performed for the development of that document thus far advises that 12 storeys is not an appropriate height for this area and the draft Centre Plan suggests a maximum height of approximately 4-6 storeys for this site (14-20metres). This advice is supported by recent community input received during public engagement for proposed development within proximity of the subject site. With this in mind, it is reasonable to infer that public opinion regarding buildings of this scale may have changed since 2006.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and have arrived at similar conclusions to the original 2006 staff report which outlined concerns for the compatibility of the proposal in relation to the surrounding low-rise uses. This notwithstanding, the proposed development agreement amendment relates only to the construction commencement date and the building itself remains unchanged. Furthermore, the Municipal Planning Strategy policy that enabled the development agreement has gone unchanged in the time since its agreement was first approved. Under these circumstances, and given that Community Council deemed the proposal to be reasonably consistent with the intent of the Municipal Planning Strategy when it was originally considered, Council may deem it appropriate to extend the existing development rights afforded to the property. As such, further to their original 2006 decision of the former Harbour East Community Council, the motion for consideration is that Harbour East - Marine Drive Community approve the proposed amending development agreement (Attachment A) and grant the extension of the date for construction commencement.

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 amending agreement. The administration of the proposed amending agreement can be carried out within the approved 2018-19 C310 Planning Applications 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 reasonably 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 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 agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or a public hearing. A decision of Council to approve this amending 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 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 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

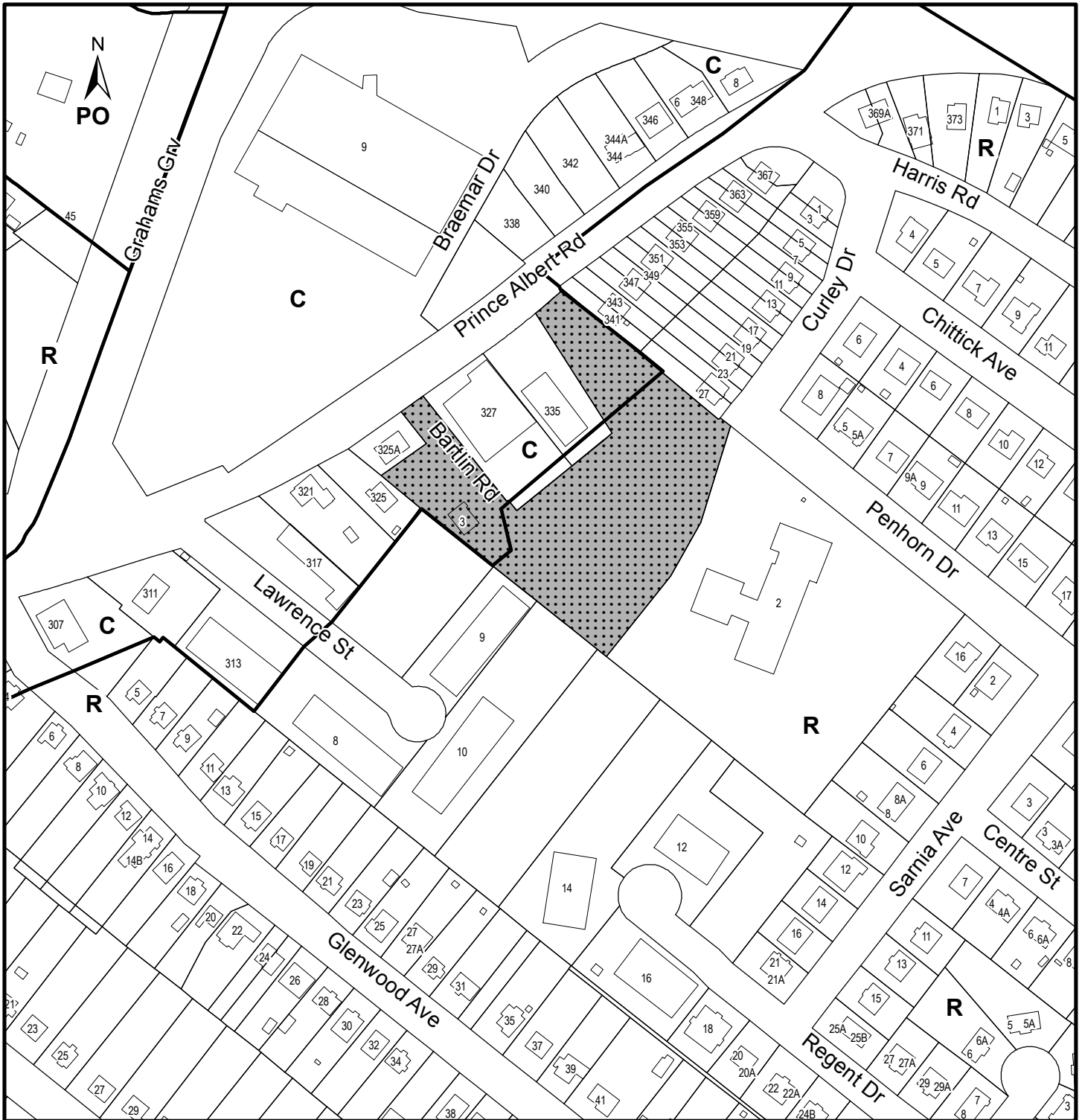
Attachment A: Proposed Amending Development Agreement

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: Dean MacDougall, Planner II, Current Planning, 902.490.4193

Original Signed

Report Approved by: _____
Steve Higgins, Manager of Current Planning, 902.490.4382



Map 1 - Generalized Future Land Use

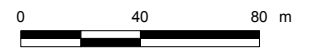
3 Bartlin Road
Dartmouth

HALIFAX

 Existing Development Agreement

Designation

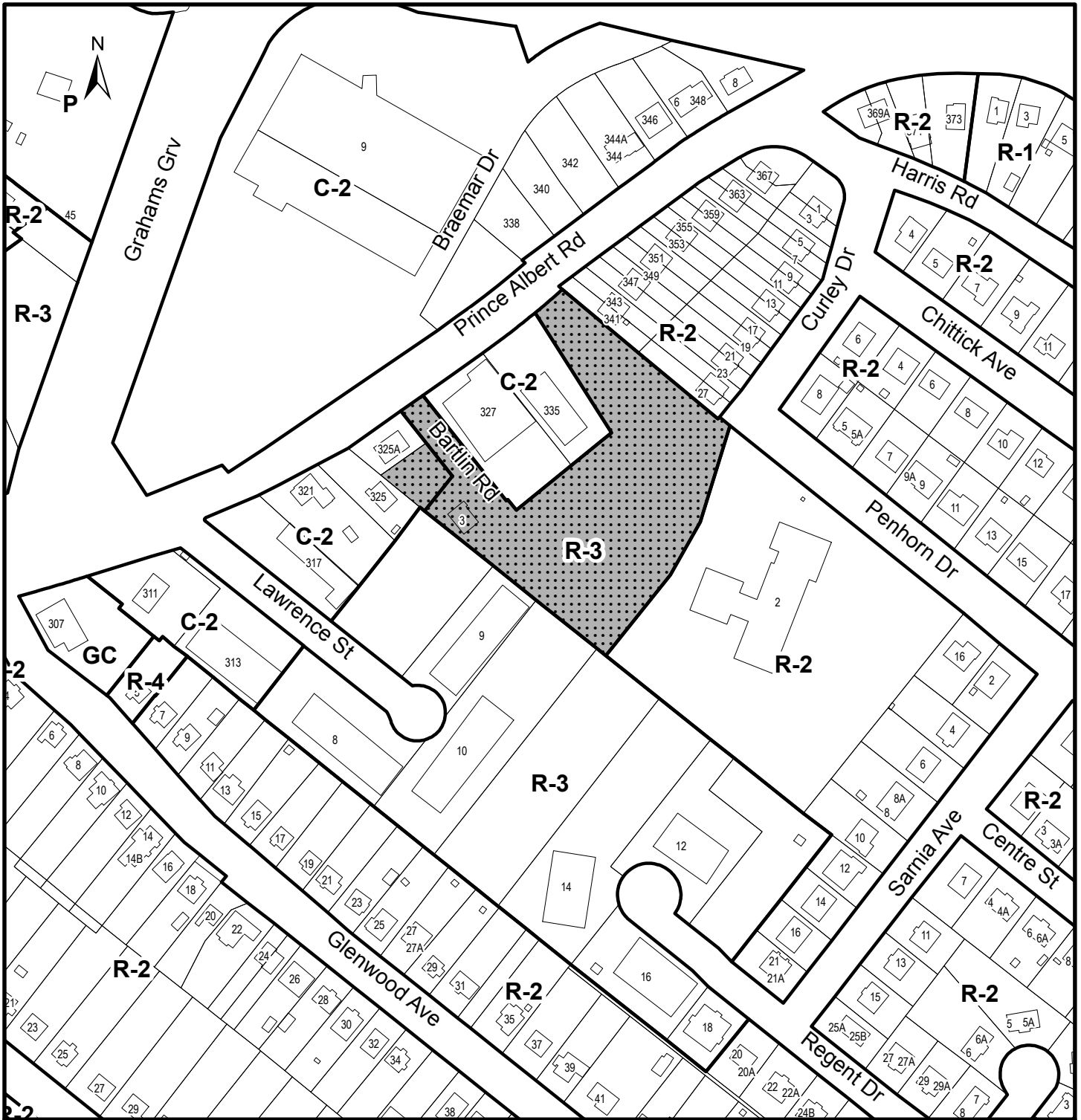
- R Residential
- C Commercial
- PO Park & Open Space



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

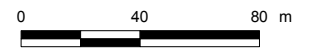
3 Bartlin Road
Dartmouth

HALIFAX

 Existing Development Agreement

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)
- C-2 General Business
- P Park



Dartmouth
Land Use By-Law Area

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

BETWEEN:

TWIN LAKES DEVELOPMENTS LTD.

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 off Prince Albert Road, Dartmouth, Nova Scotia and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Harbour East Community Council of the Municipality approved an application to enter into a Development Agreement to allow for the construction of a multiple unit residential building on the Lands (Municipal case number 00784), which said Development Agreement was registered at the Halifax County Land Registration Office on April 23, 2013 as Document Number 102868529 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested to amend the Original Agreement to allow for a two (2) year time extension to the date of commencement of construction pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 5 of the Original 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 Number 21546;

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 Development 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 Development Agreement, and the Original Agreement.
3. Subsection 5.6 of the Original Agreement shall be amended by deleting text shown in ~~strikeout~~ and inserting the text in bold as shown as follows:
 - 5.6 In the event that construction on the Lands has not commenced within ~~5 (five)~~ **two (2)** years from the date of registration of ~~this~~ **the First Amending Development 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 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:

TWIN LAKES DEVELOPMENTS LTD

Witness

Per: _____

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

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