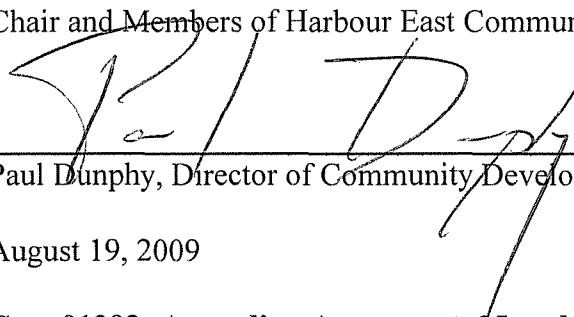


**TO:** Chair and Members of Harbour East Community Council

**SUBMITTED BY:**

  
Paul Dunphy, Director of Community Development

**DATE:** August 19, 2009

**SUBJECT:** Case 01292: Amending Agreement, 35 and 59 Baker Drive,  
Dartmouth

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**ORIGIN**

An application by Paul Skerry Architects for lands of 3228801 Nova Scotia Ltd. and Baker Drive Developments Ltd., to amend the existing development agreement for 35 and 59 Baker Drive to permit two additional driveway entrances and permit a ground sign.

**RECOMMENDATION**

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed amending development agreement set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed amending development agreement to permit two additional driveway entrances and a pylon sign at a new location as set out in Attachment A; and
3. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by Harbour East Community Council on request of the applicant, from the date of final approval of said agreement by Harbour East Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

## **BACKGROUND**

In 2005, a development agreement (Case #00759) was approved by Harbour East Community Council for a multiple unit residential building and a neighbourhood commercial/office building on Parcel 1 of the Morris-Russell Lake Master Plan. Parcel 1 has since been subdivided into the two subject properties and are currently developed (commercial building at 35 Baker Drive and the multiple unit residential building at 59 Baker Drive).

### **Proposal**

This is an application to amend the existing development agreement for the subject properties to enable two new driveway entrances and a new pylon/ground sign location that are not currently permitted under the existing development agreement as illustrated on Map 3.

### **Designation and Zoning**

The subject properties are:

- zoned Comprehensive Development District (CDD), under the Dartmouth Land Use By-law (LUB) (Map 1); and
- designated Commercial, under the Dartmouth Municipal Planning Strategy (MPS) (Map 2)

### **Enabling Policy**

Policy ML-18(a) of the Morris-Russell Lake Secondary Planning Strategy states that Parcel 1 “may be developed with an apartment building not exceeding 84 dwelling units or four stories in height and a commercial building not exceeding 14,000 square feet”.

### **Existing Development Agreement**

The original development agreement states that “access to the Lands shall be as generally illustrated on Schedule B which limits access to two thirty-foot driveways onto Baker Drive” (Attachment B). The original site plan shows the first driveway serving as an entrance to the above ground parking area for the residential building. The second driveway is shown between the residential building and the commercial building, and was supposed to service both buildings. However, during construction the Developer came to the opinion that the grade differential at the property line and between the two buildings would not reasonably allow for a shared driveway to serve both buildings. The Developer then deviated from the development agreement by constructing the second driveway to serve only the underground parking of the residential building, installed a stone retaining wall near the property line to accommodate the change in grade, and constructed a third driveway access for the commercial building.

The original development agreement included the potential for a third driveway access subject to the approval of a non-substantive amendment, which HECC approved on March 9, 2009. However, there are currently 5 driveway entrances on the sites, three of which access the residential building and two of which access the commercial building. The driveway accesses are illustrated on Map 3, the middle 3 of which are currently permitted under the development

agreement, as amended. The Developer is seeking approval of the two other driveway accesses as well as for the placement of a 20 foot tall pylon/ground sign for the commercial property. The ground sign is also currently in place on the property.

If Council refuses the proposed amending agreement, HRM will pursue the remedies available pursuant to the *Halifax Regional Municipality Charter Act* (HRM Charter) to bring the properties into compliance with the approved development agreement.

## **DISCUSSION**

The proposed driveway entrances and the ground sign location are already constructed and in use on the property. However, staff's review of the application is based on whether these elements are consistent with the intent of the applicable policies of the Dartmouth MPS (Attachment B) rather than their current status relative to compliance.

### **Driveways Entrances**

The issue of the additional two driveways is generally related to access management and impact on Baker Drive. Baker Drive has been extended to the Highway 111 interchange and extensive development has occurred in Russell Lake and on Baker Drive. Staff have reviewed the location of the additional driveways on Baker Drive and determined that they do not present any safety concern. Furthermore, the driveway locations comply with the applicable MSS Guidelines and the HRM Streets By-law. As a result, staff are of the opinion that there are no safety or access management concerns related to the additional driveways.

### **Location of Signage**

The pylon/ground sign that has been established on the property is permitted under the existing development agreement but not at its current location. Staff have reviewed the new location, including consideration of the new driveway locations, and have not identified any concerns. Given that there is no concern with the new location and the sign is already permitted at a different location, staff are of the opinion that the sign relocation request is reasonable.

### **Conclusion**

Staff have reviewed the locations of the sign and driveways in question and have not identified any concerns from a land use, safety or engineering perspective. The driveways have been found to meet all applicable HRM standards as well as the Streets By-law and the sign location does not impact traffic on Baker Drive or for vehicles entering or existing the site. As a result, staff recommend that HECC approve the proposed amending agreement as set out in Attachment A.

### **Public Information Meeting / Area of Notification**

The public information meeting was waived in consultation with the area Councillor. Should Community Council decide to schedule a public hearing, property owners within the notification

boundary identified on Map 1 will be notified directly by mail and notices advertising the public hearing will published in the newspaper.

### **BUDGET IMPLICATIONS**

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

### **ALTERNATIVES**

1. Council may choose to approve the proposed amending development agreement set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed amending development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing.
3. Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed agreement is consistent with the policies and intent of the MPS.

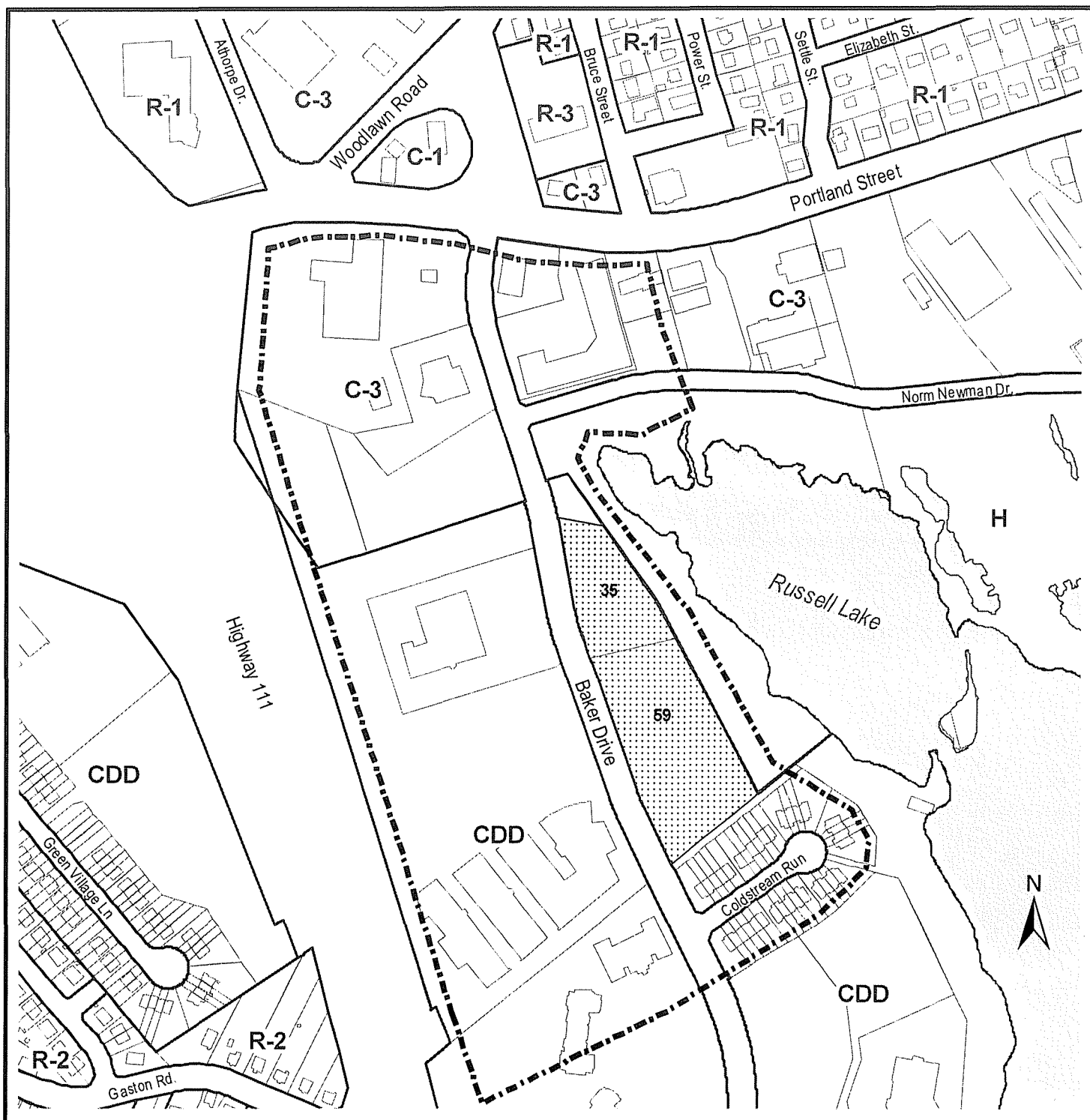
### **ATTACHMENTS**

Map 1:	Zoning and Notification Area Map
Map 2:	Generalized Future Land Use Map
Map 3:	Existing Site Plan
Map 4:	Proposed Site Plan
Attachment A:	Proposed Amending Development Agreement
Attachment B:	Excerpts from the Dartmouth MPS

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Joseph Driscoll, Senior Planner, 490-3991

Report Approved by:   
Kurt Pyle, Acting Manager of Planning Services, 490-7066



## Map 1 Location and Zoning

35 & 59 Baker Drive



Subject Parcel under DA



Notification Boundary

Dartmouth Plan Area

### Zone

R-1	Single Family Residential
R-2	Two Family Residential
R-3	Multiple Family Residential
C-1	Local Business
C-3	General Business
H	Holding
CDD	Comprehensive Development District



COMMUNITY DEVELOPMENT  
PLANNING SERVICES

150 75 0 150 300 450 Feet


This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-law area.

HRM does not guarantee the accuracy of any representation on this plan.



## Map 2 Generalized Future Land Use

35 & 59 Baker Drive

 Subject Parcel under DA

### Designation

R Residential  
C Commercial

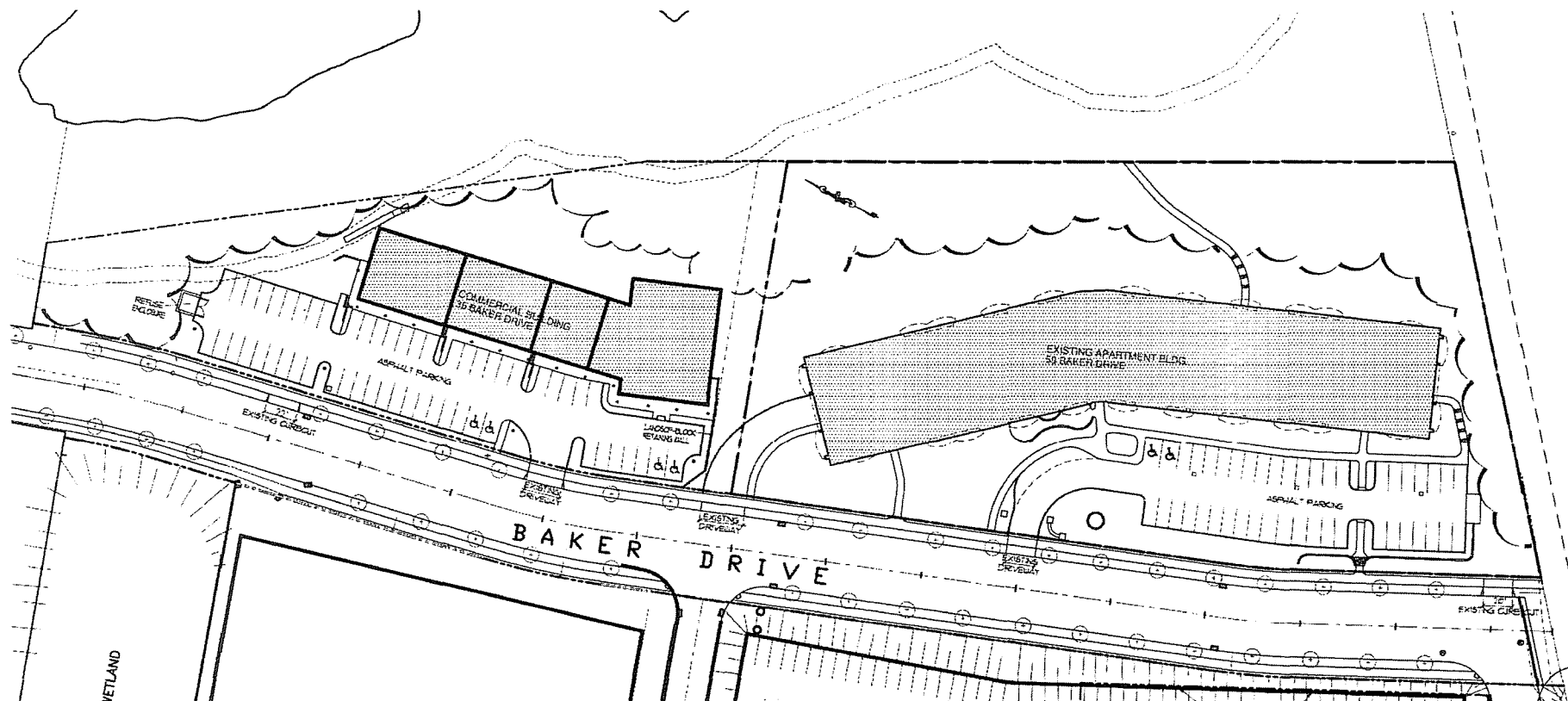
Dartmouth Plan Area

**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES

150 75 0 150 300 450 Feet

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

HRM does not guarantee the accuracy of any representation on this plan.



# SITE PLAN - EXISTING 35 & 59 BAKER DRIVE

0 5 10 25 35 45  
SCALE (feet)

## Map 3 Existing Site Plan

HRM does not guarantee the accuracy of any base information.

**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES



**Attachment A: Proposed Amending Development Agreement**

THIS SECOND AMENDING AGREEMENT made this       day of       , 2009,

BETWEEN:

**3228801 NOVA SCOTIA LIMITED**

a body corporate, in the Province of Nova Scotia

OF THE FIRST PART

- and -

**BAKER DRIVE DEVELOPMENTS LIMITED**

a body corporate, in the Province of Nova Scotia

OF THE SECOND PART

(3228801 NOVA SCOTIA LIMITED AND BAKER DRIVE DEVELOPMENTS are hereby jointly referred to as the “Developers”)

- and -

**HALIFAX REGIONAL MUNICIPALITY**

a municipal body corporate, in the Province of Nova Scotia  
(hereinafter called the "Municipality")

OF THE THIRD PART

WHEREAS Baker Drive Developments Limited entered into a Development Agreement with the Municipality on October 28, 2005, referenced as Municipal Case Number 00759, to permit a commercial building and a multi-unit residential building on former PID 40858813, which said Development Agreement was registered at the Land Registry Office in Halifax as Document Number 83934589 (hereinafter called the "Existing Agreement");

AND WHEREAS Baker Drive Developments Limited transferred its interest in a portion of its lands, described in the Schedule "A" of the Existing Agreement, to 3228801 Nova Scotia Limited on July 21, 2008;

AND WHEREAS 3228801 Nova Scotia Limited is now the registered owner of certain lands located at 35 Baker Drive, Dartmouth (PID 41184375) and which said lands are more particularly described in Schedule "A" to this Second Amending Agreement (hereinafter called the "Primary Lands");

AND WHEREAS Baker Drive Developments Limited is the registered owner of certain lands located at 59 Baker Drive, Dartmouth (PID 41195397) and which said lands are more particularly described in Schedule B to this Second Amending Agreement (hereinafter called the "Secondary Lands");

AND WHEREAS the Harbour East Community Council of the Municipality previously amended the Existing Agreement by entering into an Amending Agreement with 3228801 Nova Scotia Limited on May 19, 2009, referenced as Municipal Case Number 01241, to allow for an additional driveway entrance from Baker Drive to PID 41184375 (the Primary Lands), said Agreement was registered at the Land Registry Office in Halifax as Document Number 93618529 (hereinafter called the "First Amending Agreement");

AND WHEREAS the Developers wish to further amend the Existing Agreement to allow for a second driveway and the relocation of a pylon/ground sign on the "Primary Lands" and a third driveway on the "Secondary Lands" pursuant to the provisions of the *Halifax Regional Municipality Charter Act*, (hereinafter called the "Second Amending Agreement");

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 01292;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

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1. The Developers agree that an additional driveway entrances and a new location for a pylon sign shall be permitted on the Primary Lands, and an additional driveway entrance shall be permitted on the Secondary Lands, provided that, in the opinion of the Development Officer, the new driveway entrances and new ground sign location conform with the schedules attached to this Second Amending Agreement and the plans filed in the Halifax Regional Municipality as Case Number 01292.

The schedules are:

Schedule A:	Legal Description of the Primary Land(s)
Schedule B:	Legal Description of the Secondary Land(s)
Schedule C:	Site Plan

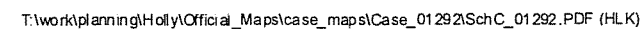
2. Prior to the Registration of this Second Amending Agreement, the Developers agree to submit legal land descriptions and/or any other information required to register this Second Amending Agreement at the Land Registry Office in Halifax.
3. The Existing Agreement and the First Amending Agreement shall be amended to permit:
  - (a) One additional driveway entrance from Baker Drive to the Primary Lands, as illustrated on Schedule C;
  - (b) One additional driveway entrance to the Secondary Lands, as illustrated on Schedule C;
  - (c) For further clarification, the Developers agree that the maximum number of driveway entrances from Baker Drive to the Primary and Secondary Lands shall be five (5). A maximum of two (2) driveway entrances shall provide access to the commercial development on the Primary Lands, and a maximum of three (3) driveway entrances may provide access to the multi-unit residential building on the Secondary Lands, as illustrated on Schedule C.
  - (b) A pylon/ground sign is permitted at the location illustrated on Schedule C.
4. With the exception of the amendments specifically identified in Section 3 above, the Developers agree that development of the Primary and Secondary Lands shall comply with the provisions set out in the Existing Agreement and First Amending Agreement.

WITNESS that this Second Amending Agreement, made in quadruplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

SIGNED, SEALED AND DELIVERED ) 3228801 NOVA SCOTIA LIMITED  
in the presence of )  
per \_\_\_\_\_ ) per: \_\_\_\_\_  
 )  
 )  
per \_\_\_\_\_ ) per: \_\_\_\_\_

SIGNED, SEALED AND DELIVERED ) BAKER DRIVE DEVELOPMENTS  
LIMITED in the presence of )  
per \_\_\_\_\_ ) per: \_\_\_\_\_  
 )  
 )  
per \_\_\_\_\_ ) per: \_\_\_\_\_

SEALED, DELIVERED AND )  
ATTESTED to by the proper )  
signing officers of Halifax Regional )  
Municipality duly authorized )  
in that behalf in the presence ) HALIFAX REGIONAL MUNICIPALITY  
 )  
per \_\_\_\_\_ ) per: \_\_\_\_\_  
 ) MAYOR  
 )  
per \_\_\_\_\_ ) per: \_\_\_\_\_  
 MUNICIPAL CLERK



Attachment B: Excerpts from the Dartmouth MPS

**ML-18**      *The Future Land Use and Transportation Plan, presented as Map 9N, shall provide overall guidance for land use allocation within this secondary plan area and the following guidelines shall be adhered to in any development agreement application:*

- (a) Parcel 1: This parcel may be developed with an apartment building not exceeding 84 dwelling units or four stories in height and a commercial building not exceeding 14,000 square feet. Commercial occupancies shall be restricted to local commercial uses, as defined by the Land Use By-law, except that drive through restaurants shall not be permitted. The site design shall give consideration to environmental and aesthetic impacts, as well as the safety and efficiency of traffic movements between the site and Baker Drive. Impervious surfaces shall not exceed 40 percent of the lot;*