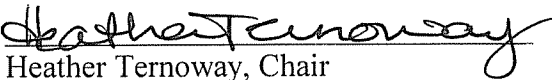


**Peninsula Community Council**  
**August 11, 2009**

**TO:** Peninsula Community Council

**SUBMITTED BY:**   
Heather Ternoway, Chair  
District 12 Planning Advisory Committee

**DATE:** August 11, 2009

**SUBJECT:** **Case 01296: Non-substantive DA amendment - 1314 Martello Street, Halifax**

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**ORIGIN**

District 12 Planning Advisory Committee meeting - August 10, 2009

**RECOMMENDATION**

**The District 12 Planning Advisory Committee recommend that Peninsula Community Council:**

1. Approve by resolution the non-substantive amendment to the existing development agreement for 1314 Martello Street, Halifax, as detailed in the amending agreement appended as Attachment A of the report dated July 3, 2009.
2. Require that the amending agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the Applicant, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

**ATTACHMENT**

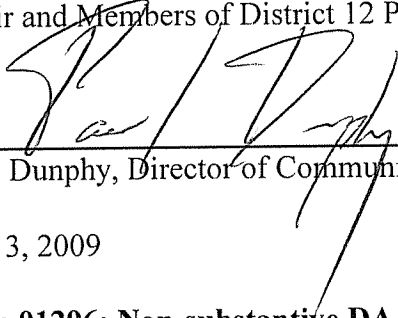
Staff report dated July 3, 2009

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Gail Harnish, Admin/PAC Coordinator, 490-4937

**District 12 PAC**  
**July 27, 2009**

**TO:** Chair and Members of District 12 Planning Advisory Committee

**SUBMITTED BY:**   
Paul Dunphy, Director of Community Development

**DATE:** July 3, 2009

**SUBJECT:** **Case 01296: Non-substantive DA amendment - 1314 Martello Street, Halifax**

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**ORIGIN**

Application by The Dean and Chapter of Cathedral Church of All Saints for a non-substantive development agreement amendment to allow for ground floor classroom and office space for Dalhousie University at 1314 Martello Street, Halifax (Chapter House).

**RECOMMENDATION**

**It is recommended that the District 12 Planning Advisory Committee recommend that Peninsula Community Council:**

1. Approve by resolution the non-substantive amendment to the existing development agreement for 1314 Martello Street, Halifax, as detailed in the amending development agreement appended as Attachment A of this report.
2. Require that the amending development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the Applicant, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

The property located at 1314 Martello Street is the subject of a development agreement approved by Peninsula Community Council on February 16, 2004, for a mixed use multiple unit residential commercial building. The existing development agreement allows the following:

- One level of underground parking with 68 parking spaces;
- Ground level commercial space comprising approximately 12,000 square feet; and,
- 50 apartment units on three floors above the ground level commercial floor.

The building construction was completed in 2005. The ground floor has been used most recently for medical services uses, but is presently vacant. There is an interest from Dalhousie University to establish classrooms and related offices on the ground floor, but such a use is not permitted by the existing development agreement. Therefore an amendment to the agreement is sought through this application to specifically permit "schools, public or private, including post-secondary research and teaching facilities." The application does not include a change to the exterior appearance of the building.

## **DISCUSSION**

Clause 2.4.3 of the existing development agreement specifies that the following commercial uses are permitted on the ground floor:

- (a) Offices;
- (b) Bank and other financial institutions;
- (c) Medical services without limitations including for example, medical doctors, dentists, optometrists, physiotherapists and other medical professionals together with the sale of associated medical supplies such as glasses, lenses, and orthopaedic devices;
- (d) Community facilities; and,
- (e) Accessory uses to the foregoing including retail services.

Clause 3.1 of the existing development agreement identifies that a change in the commercial use of Clause 2.4.3 may be considered by a non-substantive amendment (a process that does not involve a public hearing). In assessing the suitability of the proposal, Council is to consider the objectives of the Halifax Municipal Planning Strategy (MPS), and in particular the policies that specifically apply to this site (see Attachment B). With regard to land use, the policies specify that:

*The commercial component shall be limited to the ground floor and the types of commercial shall be limited to uses which would be compatible with the residential component of the building and the adjacent church. [Policy 7.5.7(h)]*

The specific request from the applicant is to permit teaching facilities for Dalhousie University on the ground floor of the mixed use multiple unit residential commercial building. This use is in keeping with uses already found in the immediate area, which include hospital and university uses of various degrees of intensity. Moreover, teaching facilities of every level (elementary, secondary, and post-secondary) often occur in close proximity to churches, making them traditionally compatible institutional uses.

Including schools as part of the list of permitted uses is also consistent with the nature of already allowed commercial uses. Schools are very similar to the already permitted "community facilities", defined by the Halifax Peninsula Land Use By-law as:

*"A building or site owned by a government agency or non-profit organization or religious institution or philanthropic institution and used as a meeting place for entertainment or education or social activities by the general public on a regular or occasional basis and includes a church hall or a public hall." (emphasis added)*

As for the potential impact of the teaching facilities on the residential component of the mixed use building, staff is of the opinion that it will be minimal for the following reasons:

- the ground floor location serves to separate the "public" classroom space from the "private" residential areas in the upper storeys;
- the size of the operation (12,000 square feet) is only a small portion of the building's gross floor area; and
- due to the nature of the operation, classroom time will be limited to daytime hours when most of the building's residents are at work.

## **Conclusion**

The proposal satisfies the applicable non-substantive provisions of the existing development agreement, as well as the policies of the Halifax Municipal Planning Strategy and as such, it is recommended that Peninsula Community Council approve by resolution the attached amending development agreement.

## **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

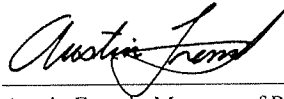
1. Peninsula Community Council may choose to approve the amending development agreement, as contained in Attachment A. This is the recommended course of action.
2. Peninsula Community Council may choose to approve the terms of the amending development agreement with modifications or conditions. Some modifications or conditions may be outside the scope of a non-substantive amendment and may require a substantive amendment to the existing development agreement.
3. Peninsula Community Council may choose to refuse to amend the existing development agreement. Pursuant to Section 245(6) of the *Halifax Regional Municipality Charter*, Council must provide reasons to the applicant justifying this refusal, based on the policies of the MPS and the non-substantive provisions of the existing development agreement.

### ATTACHMENTS

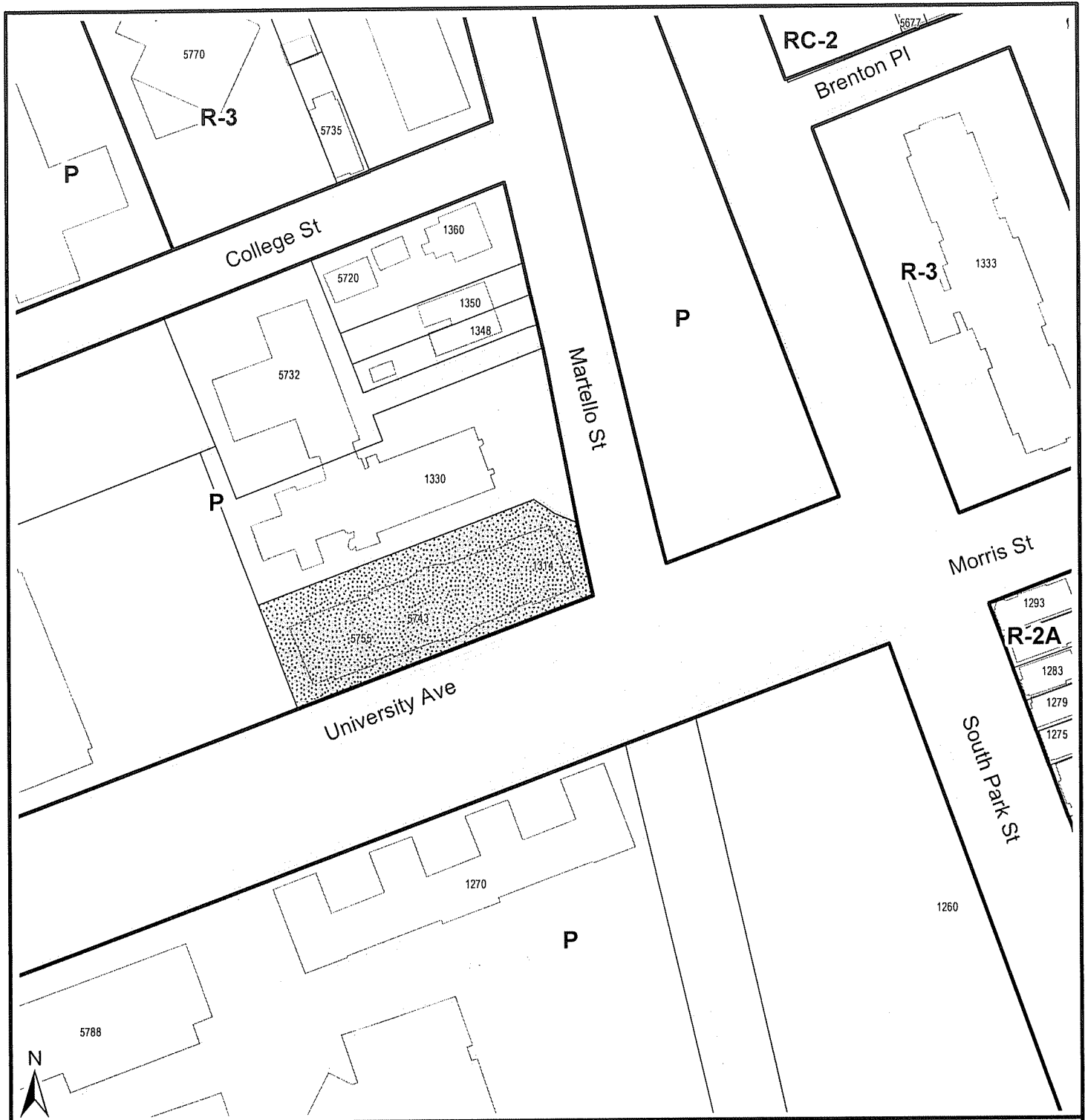
Map 1	Zoning and Location
Map 2	Generalized Future Land Use
Attachment A	Draft Amending Development Agreement
Attachment B	Relevant Municipal Planning Strategy Policies

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 : Luc Ouellet, Planner I, 490-3689




Report Approved by: Austin French, Manager of Planning Services, 490-6717



### Map 1 - Location and Zoning

1314 Martello Street  
Halifax

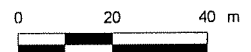


 Subject area

#### Zone

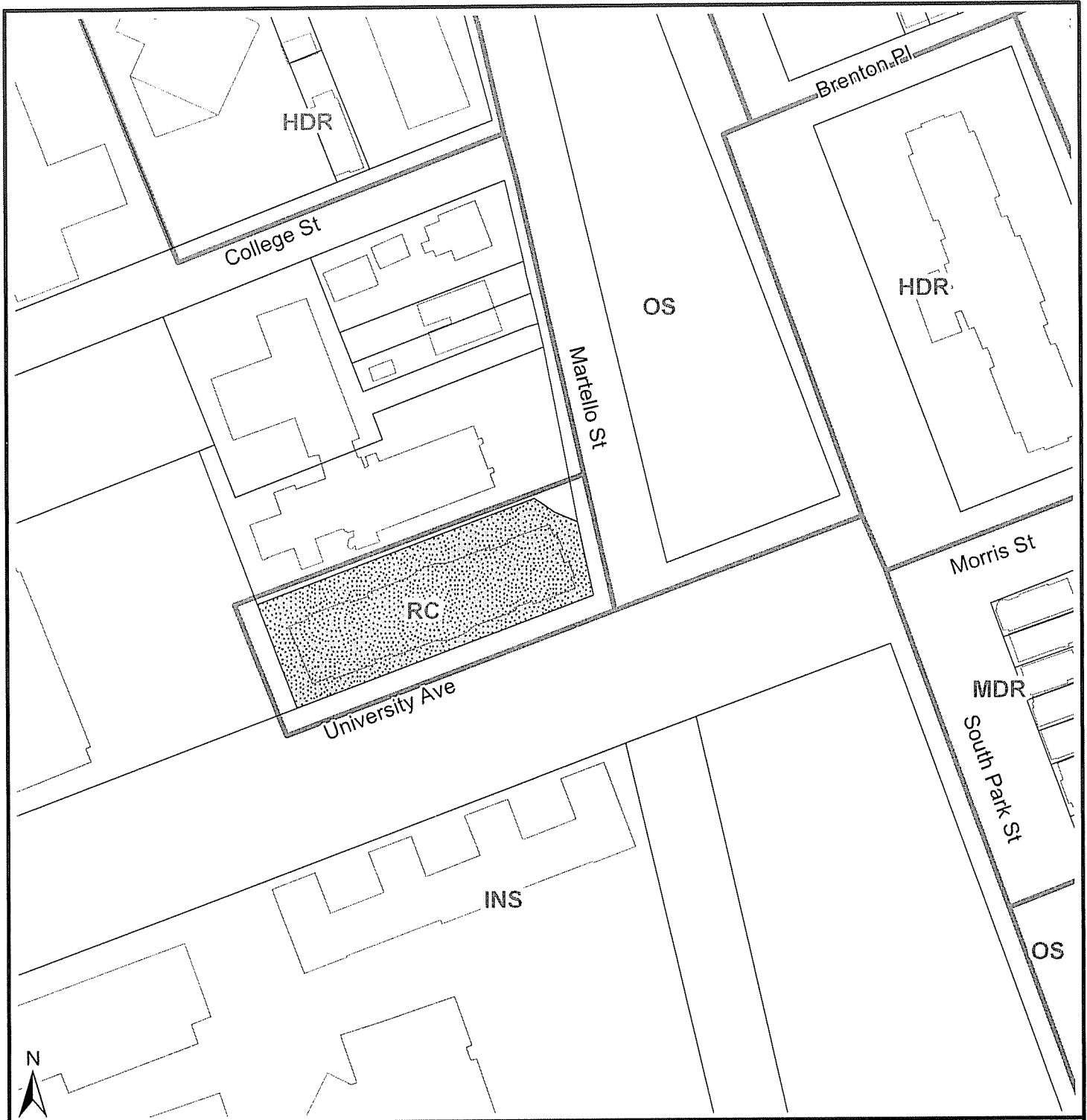
- R-2A General Residential Conversion
- R-3 Multiple Dwelling
- RC-2 Residential Minor Commercial
- P Park and Institutional

Halifax Peninsula  
Land Use By-Law Area



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law Area.

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




**Map 2 - Generalized Future Land Use**

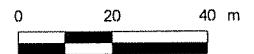
1314 Martello Street  
Halifax



**Designation**

 Subject area

- MDR Medium Density Residential
- HDR High Density Residential
- RC Residential Commercial Mix
- C Commercial
- INS Institutional



Halifax Plan Area  
South End Detailed Area Plan

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Halifax Plan Area

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

**Attachment A          Draft Amending Development Agreement**

THIS FIRST AMENDING AGREEMENT made this      day of                                  , 2009,

BETWEEN:

**THE DEAN AND CHAPTER OF CATHEDRAL CHURCH  
OF ALL SAINTS, HALIFAX**

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 1314 Martello Street, Halifax [**INSERT - PID**] and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Peninsula Community Council of the Municipality approved an application by the Developer to enter into a Development Agreement to allow for a commercial and residential building on the Lands, which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 75461450, in Book Number 7692, at Pages 358-376 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Agreement to enable the establishment of post secondary research and teaching facilities on the main level;

AND WHEREAS the Peninsula Community Council for the Municipality approved this request at a meeting held on [**INSERT-Date**], referenced as Municipal Case Number 01296;

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

1.        The Existing Agreement is amended by replacing Section 2.4.3 with the following:

2.4.3    The following commercial uses shall be permitted:

(a)      Offices;



- (b) Bank and other financial institutions;
  - (c) Medical services without limitation, including for example, medical doctors, dentists, optometrists, physiotherapists and other medical professionals together with the sale of associated medical supplies such as glasses, lenses, and orthopaedic devices;
  - (d) Community facilities;
  - (e) Schools, public or private, including post-secondary research and teaching facilities; and,
  - (f) Accessory uses to the foregoing including retail services.
2. All other terms and conditions of the Existing Agreement shall remain in full force and effect.
  3. This First Amending Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this amending agreement until it is discharged by the Council.

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

SIGNED, SEALED AND DELIVERED ) **THE DEAN AND CHAPTER OF**  
 ) **CATHEDRAL CHURCH OF ALL SAINTS,**  
 ) **HALIFAX**

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                      Relevant Municipal Planning Strategy Policies**

Policy 7.5.6    The property known as the south lawn of the Cathedral Church of All Saints, Tower Road shall be designated "Residential-Commercial Mix" on the Generalized Future Land Use Map. The property shall remain zoned as a park and institutional zone. Council may consider applications for a mixed use multiple residential and commercial building through development agreement.

Policy 7.5.7    Any development permitted pursuant to Policy 7.5.6 shall be compatible with the surrounding area especially the adjacent Cathedral Church of All Saints and Victoria Park and this shall be achieved by attention to a variety of factors for which conditions may be set out in the development agreement, such as but not limited to:

- a.            The adequacy of the servicing available to the site;
- b.            The scale, height and massing of the building and the building shall not contain more than 50 dwelling units;
- c.            Architectural design compatible with the adjacent building;
- d.            Appropriate vehicle and pedestrian access and egress;
- e.            Site landscaping and buffering;
- f.            The location and amount of parking provided;
- g.            Building materials appropriate to the context;
- h.            The commercial component shall be limited to the ground floor and the types of commercial shall be limited to uses which would be compatible with the residential component of the building and the adjacent church.