

Agreement of Purchase and Sale

Between: Halifax Regional Municipality and

[Purchaser's name]

FOR

[Lot #]

[PID #]

[Street Name – not abbreviated]

[Park Name]

[City], Nova Scotia

****DRAFT COPY ONLY** This Draft Agreement shall not constitute an offer by the Municipality

Prepared by:

Halifax Regional Municipality
Corporate Real Estate
Finance, Asset Management & ICT
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HALIFAX

This **Agreement of Purchase and Sale** dated this ____ day of _____, A.D., 2019.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate
(hereinafter called the "Municipality")

OF THE FIRST PART

-and-

[PURCHASER'S NAME – IN CAPS], a body corporate with its head office at **[Street Address, City, Province]** Canada
(hereinafter called the "Purchaser")

OF THE SECOND PART

Whereas the Municipality is the owner of and responsible for the sale of lands in the **[Park Name, City]**, Nova Scotia, (the "**Park**");

AND WHEREAS the Municipality wishes to sell and the Purchaser wishes to purchase that parcel **{or those parcels}** of land situate at **[Street Address]** in the Park being **[Lot # PID#]**, which is/**are** more particularly described in Schedule A attached hereto; and is shown on the Plan of Survey attached as Schedule A-1 (the "Plan of Survey"), (the "**Property**"), subject to the terms and conditions set out in this Agreement of Purchase and Sale (this "**Agreement**") and in the Schedules attached hereto, all of which are incorporated in and form part of this Agreement.

AND Whereas the Municipality and Purchaser are desirous of recording the terms and conditions of their agreement for the sale of the Property by the Municipality to the Purchaser and for the development of the Property by the Purchaser;

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants contained herein and in further consideration of the sum of Ten (\$10.00) Dollars paid by each party to the other party hereto, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

1. The Municipality hereby agrees to sell the Property to the Purchaser and the Purchaser hereby agrees to purchase the Property from the Municipality on the terms and conditions contained in this Agreement and in the attached Schedules.

A. CLOSING DATE

2. This Agreement shall be completed on _____ (the “Closing Date”). The parties hereto may agree to a Closing Date earlier or later than the date set out in this clause. The Manager of Corporate Real Estate, Finance, Asset Management & ICT for the Municipality is authorized to change the Closing Date on behalf of the Municipality.
3. If, through no fault of the Municipality, the Purchaser is not in a position to close the transaction on the Closing Date set out herein, and in the event another closing date cannot be mutually agreed upon, interest is to accrue on the outstanding balance of the Purchase Price at the rate of prime, as established by the bank of record of the Municipality, plus eight percent (8%), from the originally scheduled Closing Date to a subsequent Closing Date established by the Municipality; or the Municipality, at its discretion, may terminate the transaction and retain the Deposit. The Purchaser thereby forfeits any future claim or interest in the Property and the Municipality shall not be liable for any costs and damages sustained by the Purchaser.

B. Purchase Price

4. The purchase price for the Property shall be [currency in full text format] (\$#,###.##) (the “Purchase Price”) based on a lot area of [#,###.##] square feet (subject to survey) at the rate of [currency in full text format] (\$#.##) per square foot.
5. Harmonized Sales Tax (“HST”) is payable in addition to the Purchase Price. The Purchaser shall provide on or prior to the Closing Date evidence by a sworn statutory declaration satisfactory to the solicitors for the Municipality that the Purchaser is an HST registrant under the Excise Tax Act, R.S.C. 1985, c., E-15, and that such registration is in good standing and has not been varied or revoked. The Purchaser shall self assess and remit the HST payable for the transaction directly to Canada Revenue Agency. The Purchaser shall indemnify and save the Municipality harmless from any liability for the collection and remittance of the HST. This indemnification shall survive the closing of this Agreement.
6. The Municipality acknowledges that the Purchaser has submitted a deposit in the amount of [currency in full text format] (\$#,###.##) (the “Deposit”) to be held by the Municipality without interest pending the completion or termination of this

Agreement. The Deposit is to be credited against the final Purchase Price or, is to be forfeited by the Purchaser upon the failure of the Purchaser to fulfill the terms of this Agreement with such forfeiture to be in addition to any other claims the Municipality may have against the Purchaser for its failure to complete. The Deposit shall be returned to the Purchaser, without interest, in the event the Purchaser terminates this Agreement in accordance with its terms, or if the Municipality fails to fulfill the terms of this Agreement.

B. Closing

7. On the Closing Date the Purchaser shall pay the balance of the Purchase Price to the Municipality by bank draft, certified cheque or a cheque drawn against a solicitor's trust account. Interest, municipal taxes, betterment charges and other matters normally adjusted for in purchases and sales of properties of this nature ("Adjustments") shall be adjusted between the Municipality and the Purchaser as of the Closing Date.
8. On the Closing Date the Property shall be conveyed by the Municipality to the Purchaser by Warranty Deed drawn at the expense of the Municipality and to be delivered to the Purchaser by the Municipality upon payment of the balance of the Purchase Price. The Property shall be conveyed free from any registered encumbrances, except for any easements referred to in the legal descriptions contained in Schedule A, and any other easements, restrictions or covenants that do not materially affect the use and enjoyment of the Property and any overriding interests, and except for the Buy-Back Agreement to be registered on title, and except for the *Site Development and Building Standards* for the Park, and except as specified in this Agreement and in the Plan of Survey of the Property.
9. The Municipal Deed Transfer tax is not included in the Purchase Price for the Property and shall be paid by the Purchaser separately upon closing when registering the Deed from the Municipality to the Purchaser.

C. Plan of Survey and Legal Description

10. **The Property is registered and the Purchaser shall have ten (10) days from its execution of this Agreement** to investigate the title to the Property, which it shall do at its own expense. If within that time any valid objection to title is made in writing to the Municipality, which the Municipality is unwilling or unable to remove, and which the Purchaser will not waive, then this Agreement shall be null and void and the Deposit herein shall be returned to the Purchaser, without interest, and

there shall be no further obligations between the Municipality and the Purchaser, and the Municipality shall not be liable for any expenses incurred or damages sustained by the Purchaser.

D. Condition of Property

11. The Property is to be conveyed in an “as is” condition.

12. The Purchaser acknowledge and agrees that the Municipality does not make and shall not be deemed as making any representations or warranties to the Purchaser that the Property is suitable for the Purchaser’s proposed use and development of the Property (the “**Development**”) or with respect to the zoning, site, soil conditions, or any other condition with respect to the Property, regardless of any oral or written communication to the Purchaser by the Municipality, its contractors, consultants, or other servants or agents. The provision of any information to the Purchaser by the Municipality, its contractors, consultants, servants or agents is as a courtesy alone and does not relieve the Purchaser of its sole responsibility to ascertain whether the Purchaser’s proposed use of the Property will be permitted by the current by-laws or by any new zoning by-laws which may affect the Property in the future; and its responsibility to secure adequate soil testing, site environmental assessments and other investigations of the Property. Without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that:
 - a) the Property may have been rough-graded and filled by the Municipality or others;
 - b) there may be significant variations in load-bearing capacity on, in and throughout the Property;
 - c) the Purchaser shall be solely responsible for carrying out any necessary site and soil investigations of the Property to determine its load-bearing capacity and its suitability for the Purchaser’s Development of the Property; and

13. The Purchaser shall have thirty (30) days from the date the Purchaser executes this Agreement to exercise its due diligence and to carry out all appropriate site and soil inspections, and conduct such other investigations and reviews of the Property as the Purchaser deems necessary, at the Purchaser’s expense, to

determine whether the condition of the Property is satisfactory and whether the Property is suitable, in the Purchaser's opinion, for the Development and to determine whether the Development is, or will be, in compliance with all applicable zoning, land-use and building by-laws, and environmental laws and regulations. If the Purchaser is not satisfied with the condition of the Property or determines that the Property is not suitable for the Development or is not satisfied with the results of its inspections, reviews and investigations, the Purchaser will notify the Municipality in writing within thirty (30) days from the date the Purchaser executes this Agreement. Along with the written notification, the Purchaser shall provide the Municipality with a copy of any report(s) which served as the basis for this aforementioned determination. Upon the Municipality's receipt of the written notification and report(s), this Agreement shall become null and void and the Municipality shall refund the Deposit to the Purchaser, without interest, and there shall be no further obligations on the part of the Municipality, and the Municipality shall not be liable for any expenses incurred or damages sustained by the Purchaser. If the Municipality has not received the aforementioned written notification and report(s) from the Purchaser within the thirty (30) day period, it is understood and agreed that the Purchaser accepts the Property and its existing physical condition and is satisfied with its inspections, assessments, reviews and other investigations and waives any rights to subsequent objections and claims, and that the Purchaser's due diligence has been fully satisfied.

14. Upon completion of any physical inspections of the Property, the Purchaser shall reinstate the Property to the same condition it was in immediately prior to the Purchaser carrying out the inspections. The Purchaser shall indemnify the Municipality against all liabilities, costs, fines, suits, claims, demands and actions, and causes of action of any kind for which the Municipality may be considered or become liable for by granting permission to the Purchaser to conduct inspections and reviews of the Property prior to closing. Without limiting the generality of the Purchaser's responsibility to indemnify the Municipality, the Purchaser must maintain at its expense Commercial General Liability Insurance with a minimum coverage of Five Million Dollars (\$5,000,000.00). The Purchaser shall furnish to the Municipality satisfactory written evidence that such insurance is in full force and effect prior to the Purchaser commencing any physical inspections, tests, investigations and assessments of the Property.

E. Site Development and Building Standards

15. The Purchaser acknowledges that its Development of the Property must adhere to the Municipality's minimum *Site Development and Building Standards*, a copy of which is attached as Schedule "B" to this Agreement and incorporated herein, and the policies for the timing of the completion of developments in the Park which apply to all lots sales in the Park, including the sale of the Property to the Purchaser.

F. Site Development Proposal

16. Prior to the Municipality executing this Agreement, and prior to the end of the period within which the Purchaser is entitled to exercise its due diligence set out above, the Purchaser shall submit to HRM Corporate Real Estate for the Municipality's approval, preliminary conceptual design plans for the Development on the Property in the form entitled "**Site Development Proposal**" attached as Schedule "C" hereto. The preliminary conceptual plans shall include completion of Part A of the Site Development Proposal and the Site Development and Landscaping Plan showing the outline, dimensions and location of the permanent building to be constructed on the Property ("the **Building**") which must meet the minimum completed building area (the "**Minimum Completed Building Area**") of at least ten percent (10%) of the total area of the Property, , parking and road layouts, storage yards, fenced/screened area, areas to be paved, areas to be landscaped watercourses and buffers, wetlands, and natural features proposed to be preserved. The Building which comprises part of the Development and the preliminary Site Development Proposal must demonstrate full development and utilization of the site reasonably required for the immediate operational needs of the Purchaser's primary use (the Primary Use").

The Site Development Proposal shall be in conformity with the *Site Development and Building Standards* for the Park, If the Municipality as represented by HRM Corporate Real Estate does not approve the Purchaser's preliminary conceptual design plans for the development of the Property, and if the Purchaser is unable or unwilling to make such adjustments as the Municipality may reasonably request, either party shall be entitled to terminate this Agreement, and upon termination, the Deposit shall be returned to the Purchaser, without interest.

17. The Purchaser agrees to complete and submit, at least thirty (30) days prior to the Closing Date, for the Municipality's approval, the final Site Development Proposal for the Property, in conformity with the *Site Development and Building Standards* for the Park, in the form attached as Schedule "C", which upon completion by the Purchaser shall be incorporated in and form part of this Agreement. The permanent building which comprises part of the Development must cover no less than the building area provided by the Purchaser in the Preliminary Site Development and Landscaping Plan as approved by HRM Corporate Real Estate and, the Site Development Proposal must demonstrate full development and utilization of the Property reasonably required for the immediate operational needs of the Primary Use.
18. The final Site Development Proposal shall include the complete building elevation plans and floor plans and the Site Development and Landscaping Plan showing the building outline and location, parking and road layouts, storage yards, drainage features, truck turning radii, watercourses and buffers, wetlands, natural features

to be preserved, stormwater features and outfalls, ditches, garbage enclosure location and signage locations.

19. The Purchaser's obligations to develop, complete and maintain the Property in conformity with the approved Site Development Proposal, the *Site Development and Building Standards* for the Park, and to adhere to the approval process for site plan proposals and landscaping plans, shall survive the closing and continue in full force and effect, and shall run with and be binding upon the Property, (including any parcels sub-divided therefrom, or consolidated with other parcels), and shall be binding upon the Purchaser and the Purchaser's assignees and successors in title. The Purchaser acknowledges and agrees that the Municipality reserves the right to register the *Site Development and Building Standards* on title to the Property as covenants that run with the land and reserves the right to amend, modify or waive any of the *Site Development and Building Standards* as the Municipality in its sole discretion deems advisable from time to time.

20. The Purchaser agrees to complete the landscaping, hard surfacing, asphalt paving, curbing with asphalt or concrete, and any fencing, etc. ("**Site Development**") in accordance with the Site Development and Landscaping Plan that forms part of the Site Development Proposal as provided for in this Agreement. The Purchaser agrees to provide the Municipality, at or prior to the Closing Date, security in the form of a certified cheque, a bank draft in the amount stipulated in the final approved Site Development Proposal (the "Security") to ensure completion of the Work according to the Site Development and Landscaping Plan, not more than twenty-four (24) months after the Closing Date. If the Work is not completed within the said twenty-four (24) month period, the Security shall not be refunded to the Purchaser. The Security may be used by the Municipality towards completion of the Work provided for in the Site Development Proposal and Site Development and Landscaping Plan. The Security or the balance thereof shall be released upon the Purchaser's completion of the Development to the Municipality's satisfaction within the twenty-four (24) month period following the Closing Date.

21. The Purchaser agrees to commence the construction, being at a minimum the completion of the footings and foundation, of the Development as set out in the approved final Site Development Proposal no later than twelve (12) months after the Closing Date and to complete construction, pursuant to this Agreement, not later than twenty-four (24) months after the Closing Date. If the Purchaser should be in default hereunder, the Municipality may give the Purchaser notice in writing to complete the construction as set out in the approved final Site Development Proposal and in accordance with the other provisions of this Agreement within three (3) months and, if not completed within such extended period, the Purchaser shall re-convey the Property to the Municipality forthwith upon demand.

22. If at any time after the completion of the Development on the Property the Purchaser or its assigns and successors in title, plans to construct any additions, expansions, or construct additional buildings on the Property, or reconstruct the Development on the Property then the Purchaser or the subsequent owner of the Property as the case may be shall submit to the Corporate Real Estate department or its successor business unit of the Municipality for its approval, preliminary conceptual design plans for such additions, expansions and further buildings on the Property in conformity with the *Site Development and Building Standards* for the Park as may be amended from time to time. These obligations shall survive the closing of the Agreement and shall continue in full force and effect and shall run with the Property as a burden thereon.
23. Nothing set out in this Agreement above shall preclude the Purchaser from proceeding with a larger Building or additional Buildings or development on the Property, or with an alternative use, provided that such larger Development or alternative use has been approved by the Municipality's Manager of Corporate Real Estate, Finance & Asset Management (or his successor) at its sole discretion, and the larger Development or alternative use complies with the Park's *Site Development and Building Standards* and covenants.
24. The requirements to obtain approval from HRM CRE for any re-development of the Property are in addition to the requirements to obtain, *inter alia* development and building permits and applicable permits from other business units of the Municipality, including, without limitation, Planning & Development and their successor departments.
25. The Purchaser acknowledges and agrees that compliance with the zoning and building by-laws and any Development and Building Permits issued by the Municipality's Planning and Development business units of the Municipality does not satisfy compliance with the *Site Development and Building Standards* which must also be followed by the Purchaser to the satisfaction of Corporate Real Estate business unit of the Municipality ("**HRM CRE**").

G. Schedules to the Agreement

26. It is agreed between the Municipality and the Purchaser that by executing this Agreement, Schedules "B", "C", and "D", and the terms, conditions and covenants contained therein shall survive the closing of this transaction and shall run with the Property:

- a) the Site Development and Building Standards for the Park contained in Schedule “B”;
- b) the Site Development Proposal contained in Schedule “C”; and
- c) the Buy-Back Agreement contained in Schedule “D”.

H. Buy Back Agreement

27. As a condition of the Municipality executing this Agreement, the Purchaser agrees to execute upon the signing of this Agreement, a Buy-back Agreement in favour of the Municipality as provided for in Schedule “D” of this Agreement (the “Buy-Back Agreement”). The Buy-Back Agreement shall give an unencumbered and unrestricted right at the sole discretion of the Municipality to repurchase the Property if the Purchaser does not commence and complete the Development on the Property as described in the final Site Development Proposal and in accordance with the Park *Site Development and Building Standards*, within the time periods for construction commencement and completion as required by this Agreement, or if the Purchaser does not comply with the terms and conditions of the Buy-Back Agreement.
28. If the Municipality exercises its right to repurchase the Property pursuant to the Buy-Back Agreement, the repurchase price to be paid by the Municipality shall be ninety percent (90%) of the Purchase Price, subject to Adjustments. The Municipality may, in its sole discretion, also deduct the cost of reinstating the Property to the same condition the Property was in at the Closing Date of this Agreement. The cost of such reinstatement shall be determined solely by the Municipality.
29. The Buy-Back Agreement shall be recorded by the Purchaser on title to the parcel register for the Property at the Land Registration Office immediately following registration of the Deed from the Municipality to the Purchaser forthwith upon the closing in priority to any other encumbrances registered against title to the Property. At the sole option of the Municipality, and with the approval of the Purchaser, a Notice of Agreement shall be registered as an alternative to registration of the Buy-Back Agreement. The Municipality shall, upon the request of the Purchaser, release the Buy-Back Agreement from the Purchaser’s title to the Property if the Purchaser has completed construction of the Building, having the Minimum Completed Building Area, to the roof-tight stage, in accordance with the approved, final Site Development Proposal and the *Site Development and Building Standards* within twelve (12) months of the Closing Date. The Purchaser shall be solely responsible for all recording costs for the registration of the Buy-Back Agreement and the Release of the Buy-Back Agreement.

30. Provided however, the Municipality shall continue to hold security for the Site Development and Landscaping Plan Proposal as provided for in this Agreement.

I. Real Estate Brokerage Commission

31. For the Purchaser who chooses to use the services of a registered Real Estate Broker (the “Broker”), at “arms length” between the Broker and the Purchaser, the Municipality shall pay a Real Estate Brokerage Commission to the Broker declared in this agreement subject to the terms and conditions to be agreed upon between the Municipality and the Broker.
32. The Purchaser hereby declares, and Halifax Regional Municipality acknowledges the Purchaser has used the services of _____, being a registered Real Estate Broker (the “Broker”), or agent of the Broker, at “arms length” between the Broker and the Purchaser.
33. The Municipality shall pay a Real Estate Brokerage Commission to the Broker as stipulated in this clause subject to the terms and conditions to be agreed upon between the Municipality and the Broker.
- a) Real Estate Commission to be paid is based on the Purchase Price as stated in this Agreement.
 - b) On Closing, the Municipality shall pay to the Broker a Real Estate Commission of three percent (3%) on the first \$500,000 of the Purchase Price and one and a half percent (1.5%) on the remainder, plus applicable Harmonized Sales Tax, by cheque.
 - c) If for any reason the Agreement of Purchase and Sale for the Property does not close as provided for in this Agreement, the Municipality is not responsible for the payment of any Real Estate Commission nor is the Municipality liable for any other payments, penalty, actions or future consideration to the Broker.
 - d) The Broker shall provide to the Municipality a copy of the Broker’s valid license to provide real estate brokerage services in the Province of Nova Scotia, in advance of the Closing Date.

J. General Conditions

34. Except as provided in this Agreement, the Purchaser shall have no right to assign or transfer any of its rights and interests in this Agreement, without the prior written consent of the Municipality, which the Municipality in its absolute discretion, may withhold. Upon completion of the footings and foundations for the Building, the Purchaser may, with the written consent of the Municipality, sell the Property to a third party. One of the conditions of the Municipality's consent shall be that the third party agrees with the Municipality to adhere to the approved Site Development Proposal and to the *Site Development and Building Standards* for the Park, as may be amended from time to time, and that the Purchaser shall be bound by the Buy-Back Agreement. The consent of the Municipality shall not be unreasonably withheld. The Municipality shall render its decision on the sale of the Property within twenty (20) days of receiving a written request from the Purchaser.
35. The terms and conditions of this Agreement shall survive the closing of this Agreement and shall continue in full force and effect with respect to the Property.
36. Any tender of money, documents or delivery of notices required to be made by the Purchaser to the Municipality related to this Agreement shall be delivered to the Municipality to the attention of:

**Legal Services
Halifax Regional Municipality
5251 Duke Street, 3rd Floor, Halifax
PO Box 1749
Halifax, NS B3J 3A5**

With a copy of all such notices to:

**Manager, Corporate Real Estate, Finance & Asset Management
Halifax Regional Municipality
88 Alderney Drive, 3rd Floor – Dartmouth Ferry Terminal
Post Office Box 1749
Halifax, Nova Scotia B3J 3A5**

37. Any tender of documents or notices required to be made by the Municipality to the Purchaser shall be sent to the attention of the Purchaser's solicitor at the following address:

[Name of lawyer]

[Firm name and address etc.]

38. Time shall in all respects be of the essence of this Agreement. In the event of a written agreement of extension, time shall continue to be of the essence. "Day" refers to calendar day unless otherwise specified.
39. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
40. This Agreement shall enure to the benefit of and be binding upon the Municipality and shall enure to the benefit of and be binding upon the Purchaser, and its respective administrators and approved successors and assigns.
41. This Agreement, all the Schedules attached to this Agreement and the Buy-Back Agreement, shall constitute the entire Agreement between the Municipality and the Purchaser with respect to the subject matter hereof and supersedes all other agreements, contracts or understandings, whether oral or in writing. This Agreement may only be changed by a written agreement executed by both the Municipality and the Purchaser.

K. Special Conditions

SCHEDULE "A"
LEGAL DESCRIPTIONS

SCHEDULE "A-1"
PLAN OF SURVEY