

agreement of Purchase and Sale

****DRAFT COPY ONLY**

**This Draft Agreement shall
not constitute an offer by
the Municipality.**

Between:
Halifax Regional Municipality
and
[Purchaser's Name]

For Lot [Lot #]
[Property Address]
[Business Park Name]
[City/Town], Nova Scotia

Date



Halifax Regional Municipality
Real Estate & Facility Services
Transportation & Public Works
PO Box 1749
Halifax, Nova Scotia B3J 3A5

tel: 902.490.6025
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This **Agreement of Purchase And Sale** dated this ____ day of _____, A.D., 2009.

BETWEEN:

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

- and -

[Purchaser's Name]
(hereinafter called the "Purchaser")

Whereas the Municipality is the owner of and responsible for the sale of certain lands in the **[Business Park Name]**, hereinafter referred to as the "Park";

AND Whereas the Purchaser wishes to purchase Lot [Lot #] in the Park as identified in Section 1 of **Schedule "C" - Site Development Proposal** which forms part of this Agreement; along with **Plan of the Lot** attached hereto and marked as **Schedule "A"** which also forms part of this Agreement, hereinafter referred to as the "Property";

AND Whereas the Municipality and Purchaser are desirous of recording the terms and conditions of their agreement for the sale of the Property from 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 of the Municipality and the Purchaser hereto to the other party, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

A. Purchase Price

1. The Municipality hereby agrees to sell the Property to the Purchaser and the Purchaser hereby agrees to purchase the Property from the Municipality, all on the terms and conditions contained in this **Agreement of Purchase and Sale**.
2. The Purchase Price for the Property shall be \$ _____ per square foot for a lot area of _____ square feet which, subject to the preparation of a Plan of Survey and Legal Description, results in a Purchase Price of \$ _____.
3. The Municipality acknowledges that the Purchaser has submitted a Deposit of \$ _____ to be held In Trust by the Municipality without interest. The Deposit is to be credited against the final Purchase Price, or to be forfeited upon the failure of the Purchaser to fulfill the terms of this Agreement. The Deposit shall be returned to the Purchaser, without interest, in the event the Municipality fails to fulfill the terms of this Agreement.
4. On the Closing Date, the Purchaser shall pay the balance of the Purchase Price, that is \$ _____ to the Municipality by certified cheque or solicitor's trust account. Interest, municipal taxes and other matters normally adjusted for properties of this nature shall be adjusted between the Municipality and the Purchaser as of the Closing Date.

B. Closing

5. The Closing Date for the sale of the Property by the Municipality to the Purchaser and for the payment of the balance of the Purchase Price by the Purchaser to the Municipality shall take place on _____. Nothing in this Agreement precludes the Municipality and the Purchaser from mutually agreeing to a Closing Date earlier or later than the date set out in this Clause. For purposes of this Agreement, the Manager of Real Estate & Facility Services, Transportation & Public Works for the Municipality is authorized to change the Closing Date on behalf of the Municipality.
6. If, through no fault of the Municipality, the Purchaser is not in a position to close the transaction on the Closing Date established in Clause 5 of this Agreement, and in the event another 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 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 10% Deposit. The Purchaser thereby forfeits any future claim or interest in the Property.
7. In the event that the Purchaser does not complete the Closing of this Agreement as provided for herein, then the Purchaser shall forfeit the Deposit, and this forfeiture shall be in addition to all other claims that the Municipality may have against the Purchaser for its failure to complete this Agreement.

8. At the Closing 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 Purchase Price. At the Closing the Municipality and the Purchaser agree that the taxes to be paid on the Purchase Price are, without restricting the generality of the foregoing, the **Harmonized Sales Tax** and the **Municipal Deed Transfer Tax**, which are not included in the Purchase Price for the Property and are to be paid separately by the Purchaser at the Closing. If the Purchaser is an HST registrant, the Purchaser will self-assess the HST portion and remit directly to Canada Revenue Agency for the payment of HST related to this transaction.

C. Plan of Survey and Legal Description

9. The Municipality shall, at its expense, furnish the Purchaser with a plan of survey and legal description of the Property as soon as possible following the signing of this Agreement by the Municipality and the Purchaser. The Municipality shall make its best efforts to migrate the Property under the Land Registration Act at least five (5) days prior to the closing date. Upon receipt of notice of the final registration, the Purchaser shall be entitled to three(3) business days 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 shall be 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 without liability by the Municipality for any expenses incurred or damages sustained by the Purchaser.

D. Condition of Property

10. Unless otherwise specifically agreed upon in writing by the Purchaser and the Municipality, the Property is conveyed on an "as is" basis as of the date of submission of the ten percent (10%) Deposit for purchase of the Property; that is _____.
11. The Municipality and the Purchaser acknowledge and agree that the Municipality shall not be deemed as making any representation or warranties to the Purchaser with respect to the site conditions of the Property. The Purchaser shall be solely responsible for carrying out all appropriate site investigations and ensuring that the Property and the Development on the Property are in compliance with all applicable building and environmental regulations including, without limitation, the following:
- a. the Purchaser acknowledges that the Property may have been rough-graded and filled by the Municipality;

- b. the Purchaser accepts that there may be significant variations in bearing capacity on and throughout the Property;
 - c. the Purchaser shall be solely responsible for carrying out any necessary soils investigations of the Property to determine its load-bearing capacity and suitability for the proposed Development on the Property;
 - d. the Purchaser shall be solely responsible for determining that the Property and the Development on the Property will comply with all applicable building and environmental regulations; and
 - e. that the foregoing representations, as to suitability and to possible variations in soil bearing capacity, shall not be modified or varied in any manner whatsoever as a result of any oral or written communication to the Purchaser by the Municipality, its contractors, consultants, or other servants and agents. The provision of any information to the Purchaser by the Municipality, its consultants or contractors, is as a courtesy alone and in no way relieves the Purchaser of its obligation to secure adequate soils testing for its proposed Development.
12. The provisions of Clauses 10 and 11 shall survive the Closing of this Agreement and shall continue in full force and effect with respect to the Property.
13. The Purchaser shall have thirty (30) days from the date of signing this Agreement to make such physical and other inspections and reviews of the Property as the Purchaser shall deem necessary, at the Purchaser's expense, to determine whether the Property is suitable, in the Purchaser's opinion, for the Purchaser's intended use of the Property. If the Purchaser determines that the Property is not suitable for its intended use, the Purchaser will notify the Municipality in writing on or before thirty (30) days from the date of the signing of this Agreement by the Purchaser. Along with the written notification, the Purchaser shall provide the Municipality with a copy of the report(s) which served as the basis for this aforementioned determination. Upon the Municipality's receipt of the aforementioned written notification and report(s), this Agreement becomes null and void and the Municipality shall refund the deposit, to the Purchaser, without interest and there shall be no further obligations by the Municipality and without liability by the Municipality for any expenses incurred or damages sustained by the Purchaser. In the event 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 by the Purchaser and the Municipality that the Purchaser, for the purpose of this Agreement, accepts the existing physical conditions of the Property; waives any rights to subsequent objections and claims, and that the provisions of this clause have been fully satisfied. Upon completion of the physical inspections of the property, the Purchaser shall reinstate the Property to the Property's previous condition immediately prior to the Purchaser carrying out the inspections. The Municipality requires that the Purchaser 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 responsibility to indemnify the Municipality, the Purchaser must maintain and pay all premiums for general public liability insurance with a minimum coverage of \$2 million. The Purchaser shall furnish to the Municipality satisfactory written evidence that such insurance is in full force and effect prior to the Municipality giving permission to complete inspections and reviews of the Property.

E. Site Development Proposal

14. The Purchaser agrees to complete the development of the Property, hereinafter referred to as the "Development", as described in the **Site Development Proposal**.
15. As provided for in the **Site Development Proposal**, the Purchaser shall submit a **Site Development and Landscaping Plan**, which shall form part of the **Site Development Proposal**.
16. The Purchaser agrees to complete the landscaping; asphalt paving; curbing with asphalt or concrete; and any fencing in accordance with the **Site Development and Landscaping Plan** that forms part of the **Site Development Proposal** as provided for in this Agreement. In furtherance of this Agreement, the Purchaser agrees to provide to the Municipality, at or prior to Closing, security in the form of either a certified cheque payable to the Municipality or an unconditional line of credit from a chartered bank or other federally chartered lending institution, satisfactory in form and amount to ensure completion of the aforementioned work, according to the **Site Development and Landscaping Plan**, not more than twenty-four (24) months after the Closing. In the event that the work is not completed within the said twenty-four (24) month period, then the security shall not be refunded to the Purchaser. The proceeds of the security shall be used by the Municipality towards completion of the improvements provided for in the **Site Development Proposal** and **Site Development and Landscaping Plan**.
17. The amount of the security as referred to in Clause 16 above shall be the amount stipulated in Section 14 of the Site Development Proposal.
18. The Purchaser agrees to commence the Development set out in this **Site Development Proposal** not later than twelve (12) months after the date of Closing and to complete its construction, pursuant to this Agreement, not later than, twenty-four (24) months after Closing. If the Purchaser should be in default hereunder, the Purchaser may be given notice in writing to complete the construction as set out in the **Site Development Proposal** and in accordance with the other provisions of this Agreement within three months and, if not completed within such extended period, the Purchaser shall reconvey the lands to the Municipality.
19. Within forty-five (45) days from the date of signing of this Agreement by the Municipality, the Purchaser shall submit to the Municipality for the Municipality's approval preliminary conceptual design plans for the Development on the

Property in conformity with the **Site Development Proposal** and the **Site Development and Building Standards for the Park**, both of which form part of this Agreement. This Clause shall survive the Closing of this Agreement and shall continue in full force and effect with respect to the Property.

20. At any time after the completion of the Development on the Property by the Purchaser, if the Purchaser plans to construct any additions, expansions, or construct additional buildings on the Property, then the Purchaser shall submit to the Municipality, for the Municipality's 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. This Clause shall survive the Closing of this Agreement and shall continue in full force and effect with respect to the Property.

F. Site Development and Building Standards

21. The Purchaser agrees and acknowledges that it is the Municipality's policy with respect to all land sales by the Municipality within the Park, including the Property, that certain minimum **Site Development and Building Standards** that form part of this Agreement be adhered to and that the completion and implementation of these **Site Development and Building Standards** by the Purchaser is a requirement of this Agreement of Purchase and Sale. This clause shall continue in full force and effect with respect to the Property and this clause shall survive the Closing.
22. Nothing set out in this Agreement above shall preclude the Purchaser from proceeding with a larger Development on the Property, or with an alternative use, provided that such larger Development or alternative use has been approved by the Municipality and the larger Development or alternative use complies with the Park's **Site Development and Building Standards**.

G. Schedules to the Agreement

23. 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

24. The Property shall be conveyed free from any encumbrances except as to the **Buy-Back Agreement** as provided for in **Schedule "D"** of this Agreement, and to any Easements, Restrictions or Covenants that affect the Property, except as specified in this Agreement and the Plan of Survey.
25. As a condition of the Municipality executing this Agreement, the Purchaser agrees to execute upon the signing of this Agreement of Purchase and Sale, a **Buy-Back Agreement** in favour of the Municipality that will be recorded against title to the Property. The **Buy-Back Agreement** will give an unencumbered and unrestricted right, at the sole discretion of the Municipality, to repurchase the Property in the event that the Purchaser does not build the Development on the Property as described in the **Site Development Proposal** within the time periods for construction commencement and construction completion as required by this Agreement; or does not comply with the other terms and conditions of the **Buy-Back Agreement**.
26. The repurchase price to be paid by the Municipality in the event the Municipality exercises its right under the **Buy-Back Agreement** shall be 90% of the Purchase Price less the cost of reinstating the Property to its condition at the date of submission of the ten percent (10%) Deposit for purchase of the Property if the Municipality, at its sole discretion, decides not to accept the Property in its condition on the date that the Municipality decides to exercise its rights to repurchase the Property under the terms of the **Buy-Back Agreement**. The cost of reinstatement as referred to above shall be determined by the Municipality.
27. The **Buy-Back Agreement** which is **Schedule "D"** to this Agreement of Purchase and Sale shall be signed by the Purchaser and the Municipality at the time of signing of this Agreement of Purchase and Sale. The **Buy-Back Agreement** shall be recorded against title to the Property and the **Buy-Back Agreement** shall be in priority to any encumbrances registered against title to the Property by the Purchaser. 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**.

I. Real Estate Brokerage Commission

28. 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.
29. The Purchaser hereby declares, and Halifax Regional Municipality acknowledges the Purchaser has used the services of <type in full name of broker, and

company, and address>, being a registered Real Estate Broker (the "Broker"), at "arms length" between the Broker and the Purchaser.

30. 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, by cheque drawn against the Municipality or by cheque drawn against the Municipality's solicitor's trust account. The commission shall include applicable Harmonized Sales Tax.
 - 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 the 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 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 of this agreement.

J. General Conditions

31. The Municipality, at its sole discretion, may give permission to the Purchaser to take early possession of the Property. Upon taking early possession of the Property, the Purchaser thereby indemnifies 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 reason of the Purchaser taking early possession of the Property. Without limiting the generality of the Purchaser's responsibility to indemnify the Municipality, the Purchaser shall maintain and pay all premiums for general public liability insurance with a minimum coverage of \$2 million. The Purchaser shall furnish to the Municipality satisfactory written evidence that such insurance is in full force and effect prior to the Closing.
32. Any tender of documents to be delivered, or money payable, or any notices required hereunder, shall be made upon the Municipality or any party acting for the Municipality, and monies to be by way of certified cheque, with all written notices to be sent by mail at the address of the Municipality to the attention of:

**Manager, Real Estate & Facility Services, Transportation & Public Works
Halifax Regional Municipality
40 Alderney Drive, 6th Floor
Post Office Box 1749
Halifax, Nova Scotia B3J 3A5**

33. Any tender of documents to be delivered, or money payable, or any notices required hereunder, shall be made upon the Purchaser or any party acting for the Purchaser and monies to be by way of certified cheque, with all written notices to be sent by mail at the address of the Purchaser to the attention of the Purchaser or the Purchaser's representative as set out in Section 2 of the Site Development Proposal.
34. 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.
35. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
36. This Agreement shall be to the benefit of and be binding upon the Municipality and the Purchaser, their executors, respective heirs, administrators and approved successors and assigns, provided however, that prior to the commencement of the Development 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.
37. Upon commencement of the Development, the Purchaser may, with the written consent of the Municipality, sell the Property to a third party. 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) business days of receiving a written request from the Purchaser.
38. This 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 all of the Municipality and the Purchaser hereto.

