

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 [Property Address]
[City/Town], Nova Scotia

Date



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

tel: 902.490.6025
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This **Agreement of Purchase and Sale** made this ____ day of _____, 200.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY
(hereinafter called the "Municipality")

-and-

[PURCHASER'S NAME]
(hereinafter called the "Purchaser")

Whereas the Municipality is the owner of [Property Address];

AND Whereas the Purchaser wishes to purchase [Property Address] which is shown on the **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:

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 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.
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 Property, Transportation & Public Works Services for the Municipality is authorized to change the Closing Date on behalf of the Municipality, provided such change is in the interest 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 Deposit. The Purchaser thereby forfeits any future claim or interest in the Property and the Municipality shall not be liable for any costs or damages.
7. 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.

8. The Property shall be conveyed subject to any Encumbrances, Easements, Restrictions or Covenants that affect the Property.
9. 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.
10. Unless otherwise specifically agreed upon in writing by the Purchaser and the Municipality, the Property is conveyed on an **"as is"** basis.
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 any subsequent development on the Property;
 - d. the Purchaser shall be solely responsible for determining that the Property and any proposed subsequent 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 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. If required, the Municipality, at its expense, will prepare a Plan of Survey and Legal

Description of the Property to be conveyed to the Purchaser in advance of the Closing Date.

14. The Purchaser shall have _____ (XX) business days from the date of Regional Council's approval of 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 _____ (XX) days from the date of Regional Council's approval of this Agreement. Along with the written notification, the Purchaser shall provide the Municipality with a copy of the summary 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 _____ (XX) 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.
15. The Municipality shall furnish the Purchaser with a 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.

16. As a condition of the Municipality executing this Agreement, the Purchaser agrees to execute at the time of 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 decides to sell or apply to demolish the building or the Purchaser or any successor Purchaser no longer operates the Property as provided for in Clause __ of this Agreement. The repurchase price shall be the appraised value, as determined by an independent appraisal, less the current appraised value of the property which has been determined to be _____ Dollars (\$___), adjusted for annual inflation to the date of the repurchase. **(OPTIONAL)* The Municipality may also exercise the Buy-Back Agreement if the improvements listed in Schedule "C" of this Agreement valued at \$___ are not substantially completed by the Purchaser within ____ (__) months of the Closing. The Municipality shall give the Purchaser a sixty (60) day "notice of intent" to exercise its rights under the Buy-Back Agreement.
17. In the event that the Purchaser disputes the repurchase price as stated in Clause __, as determined by the Municipality and by independent appraisal, the Purchaser shall give notice of such dispute, in writing, to the Municipality within thirty (30) days. The Purchaser may then, at it's expense, obtain a second independent appraisal. If the Purchaser and the Municipality are not able to agree to a purchase price for the Buy-Back Agreement within thirty (30) days of the date of notice to the Municipality, the dispute shall be referred to two arbitrators and the dispute shall be arbitrated in accordance with the Commercial Arbitration Act, S.N.S., 1999 c. 5, as amended.
18. Clauses 16 and 17 shall survive the Closing of this Agreement and shall continue in full force and effect with respect to the Property.
19. The Property shall be used for the purpose of operating a _____ and/or other not-for-profit community services in support of _____ as approved by the Purchaser.
20. All lands and the Property being purchased hereby shall be and remain the responsibility of and at the risk of the Municipality pending the Closing.
21. 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.

22. 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.
23. 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.
24. 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.
25. Any tender of documents to be delivered, or money payable, or any notices required hereunder, shall be made upon the Municipality or the Purchaser or any party acting for them, 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
PO Box 1749
Halifax, NS B3J 3A5**

and the Purchaser to the attention of:

[Purchaser's Name]

26. This Agreement is subject to the approval of the Regional Council of Halifax Regional Municipality. In the event that the Regional Council does not approve this Agreement of Purchase and Sale or approves this Agreement subject to additional terms and conditions that are not agreeable to the Purchaser the Municipality shall refund to the Purchaser without interest the payment made by the Purchaser to the Municipality totaling \$_____ for the cost of preparing the plan of survey and legal description, the appraisal of the market value of the Property and the preparation of the deed and Municipal closing costs. In addition, the Municipality will refund to the Purchaser, without interest, the Deposit on the purchase price in the amount of \$_____. Upon the refund of the monies referred to in this Clause this Agreement shall be null and void; 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.
27. 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. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
28. 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. 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.

IN WITNESS WHEREOF the Municipality and the Purchaser hereto have executed this Agreement on the ____ day of _____, 200.

SIGNED, SEALED and DELIVERED

_____)	[PURCHASER'S NAME]
)	
)	
)	
_____)	_____
Witness)	
)	
)	
)	
_____)	_____
Witness)	
)	
)	
)	HALIFAX REGIONAL MUNICIPALITY
_____)	_____
Witness)	Mayor
)	
)	
_____)	_____
Witness)	Municipal Clerk