

Buy-Back Agreement

Schedule “D” to the Agreement of Purchase & Sale

[PURCHASER’S NAME]

And

HALIFAX REGIONAL MUNICIPALITY

FOR

Lot **[#]**

[Street Address]

[Park Name]

[City], Nova Scotia

Prepared by:

Halifax Regional Municipality
Corporate Real Estate
Finance & Asset Management
PO Box 1749
Halifax, Nova Scotia, B3J 3A5

t. 902.490.6025

f. 902.490.6030

www.halifax.ca

HALIFAX

This **Buy-Back Agreement** dated this _____ day of _____, 2019.

BETWEEN:

{PURCHASER'S NAME},
a body corporate,
incorporated under the laws of the Province of Nova Scotia,
(hereinafter called the "**Purchaser**")

OF THE FIRST PART

-and-

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

OF THE SECOND PART

Whereas the Municipality is responsible for the sale and management of certain lands in the **Burnside** Park, **Dartmouth**, Nova Scotia, (the "**Park**");

WHEREAS by an Agreement of Purchase and Sale (the "**Agreement of Purchase and Sale**") dated as of the same date as this Buy-Back Agreement, the Municipality agreed to sell, and the Purchaser agreed to purchase a parcel of land in the Park known as Lot **[#]**, situate at **[Street Address]**, **Dartmouth** and identified as apparent PID **[#]**, which is more particularly described in Schedule A attached hereto (the "**Property**");

AND WHEREAS the Purchaser has agreed to develop the Property as set out in the Agreement of Purchase and Sale and in accordance with the *Site Development and Building Standards* for the Park, set out in Schedule B of this Agreement (the "**Site Development and Building Standards**") and in accordance with the Purchaser's approved final Site Development Proposal set out Schedule C of the Agreement of Purchase and Sale (the "**Site Development Proposal**").

AND WHEREAS the Purchaser has agreed to execute this Buy-Back Agreement pursuant to the Agreement of Purchase and Sale.

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

A. Buy Back Agreement as First Charge Upon the Property

1. This Buy-Back Agreement shall constitute a first charge on the Property. The Purchaser agrees that at its expense, it will register this Buy-Back Agreement (or a Notice of this Buy-Back Agreement instead if the Municipality in its sole discretion so directs) at the Halifax Land Registration Office immediately following the Purchaser's registration of the Deed from the Municipality to the Purchaser. This Buy-Back Agreement shall rank as a first charge in priority to any other encumbrances, mortgages and charges registered against the title to the Property.

B. Construction of Minimum Completed Building Area

2. The Purchaser agrees to develop the Property as described and specified in the approved final Site Development Proposal attached as Schedule "C" to the Agreement of Purchase and Sale (the "**Purchaser's Development**") which includes a permanent building on the Property of the standard required under the Site Development and Building Standards (the "**Building**") having a minimum completed building area to be the greater of ten percent (10%) of the total area of the Property or the building area provided in the approved Site Development Proposal (the "**Minimum Completed Building Area**"). The Minimum Completed Building Area of the Building shall be calculated according to the provisions of the Park's Site Development and Building Standards.
3. Any changes to the Purchaser's Development as described in the Agreement of Purchase and Sale and the approved final Site Development Proposal must first be approved in writing by the Municipality's Manager of Corporate Real Estate.
4. The Purchaser agrees that at a minimum the footings and foundation for the Building having the Minimum Completed Building Area on the Property shall be completed not later than twelve (12) months after the Closing Date of the Agreement of Purchase and Sale (the "**Closing Date**"). The Purchaser's Development, including the construction of the Building meeting the Minimum Completed Building Area, together with the full development of the entire Property in accordance with the approved final Site Development Proposal and the Site Development and Building Standards shall be completed not later than twenty-four (24) months after the Closing Date.

C. Repurchase of Property

5. This Buy-Back Agreement gives the Municipality an exclusive, unencumbered and unrestricted right to repurchase the Property in its sole discretion, at anytime commencing twelve (12) months after the Closing Date, if the Purchaser has not within twelve (12) months after the Closing Date, constructed the footing and foundation of the Building

having the Minimum completed Building Area in accordance with the approved final Site Development Proposal and the Site Development and Building Standards; or, if the Purchaser has not completed the entire Purchaser's Development within twenty-four (24) months after the Closing Date as required by this Buy-Back Agreement and the Agreement of Purchase and Sale.

E. Premium Payment to Extend Completion Date

6. As an alternative, the Purchaser may extend the commencement date and/or the completion date of the Purchaser's Development in the circumstances set out below by paying the Municipality premium payment(s) in an amount to be determined by the Municipality by calculating the required Minimum Completed Building Area for the Purchaser's Development multiplied by a deemed real property assessment per square foot (currently \$100 per square foot, which is subject to change by the Municipality without notice) based on the value of the Purchaser's Development as if completed (the "Premium Payment(s)"). The prevailing commercial real property tax rates of the Municipality as of such anniversary year of the Closing Date shall be applied to such assessments to determine the Premium Payment for the applicable 12-month extension period. HST is payable in addition to the Premium Payments.
 - a) If the Purchaser does not complete the footings and foundation of the Building having the Minimum Completed Building Area in compliance with the final approved Site Development Proposal, the Site Development and Building Standards, the Agreement of Purchase and Sale and this Buy-Back Agreement within twelve (12) months of the Closing Date, the Purchaser may preclude the Municipality from exercising its rights to repurchase the Property until twenty-four (24) months after the Closing Date, by paying the Premium Payment to the Municipality on or before the twelfth (12th) month following the Closing Date.
 - b) If the Purchaser has not commenced or fully completed the Purchaser's Development including the Building having the Minimum Completed Building Area and including the development of the entire site, in compliance with the final approved Site Development Proposal, the Site Development and Building Standards, the Agreement of Purchase and Sale and this Buy-Back Agreement within twenty-four (24) months of the Closing Date, the Purchaser may preclude the Municipality from exercising its rights to repurchase the Property for an additional period of twelve (12) months by paying the Premium Payment to the Municipality on or before the twenty-fourth (24th) month following the Closing Date.
 - c) If the Purchaser has not commenced or fully completed the Purchaser's Development in compliance with the final approved Site Development Proposal, the Site Development and Building Standards, the Agreement of Purchase and Sale and this Buy-Back Agreement within thirty-six (36) months from the Closing Date the Purchaser may preclude the Municipality from exercising its rights to repurchase the Property for an additional period of twelve (12) months by paying the Premium Payment to the Municipality on or before the thirty-sixth (26th) month following the Closing Date.

- d) The Municipality will not, under any circumstances, extend the deadline for full completion of the Purchaser's Development deadline later than forty-eight (48) months following the Closing Date.
7. If the Purchaser has not commenced and completed the Purchaser's Development within the times limits set out in the Agreement of Purchase and Sale or in this Buy-Back Agreement or has not paid the Premium Payments when due, the Municipality may, at any time in its sole discretion exercise its right to repurchase the Property pursuant to this Buy-Back Agreement.
 8. If the Municipality elects to buy back the Property due to the Purchaser's failure to comply with the terms of the Agreement of Purchase and Sale or this Buy-Back Agreement, or its failure to pay the Premium Payments, the repurchase price for the Property shall be ninety percent (90%) of the original Purchase Price paid by the Purchaser, (subject to adjustments for interest, municipal taxes, betterments, fuel, rentals, and other matters normally adjusted for in purchases and sale of real property in Nova Scotia). The Municipality may, in its sole discretion, also deduct the cost of reinstating the Property to the same condition it was in at the Closing Date, if the Municipality at its sole discretion decides not to accept the Property in its condition on the date the Municipality repurchases it. The cost of reinstatement shall be determined by the Municipality.
 9. The Purchaser shall deliver up clean and vacant possession and shall convey the Property to the Municipality by Warranty Deed, free and clear of encumbrances, and drawn at the expense of the Purchaser, within thirty (30) calendar days of the date of written notice from the Municipality or within such other date as the Municipality, in its sole discretion, may direct.
 10. The Municipality's rights to repurchase the Property pursuant to this Buy-Back Agreement shall continue in force until the Purchaser has completed the construction of the Building having the Minimum Completed Building Area as set out in the approved final Site Development Proposal and in compliance with the Site Development and Building Standards to the roof-tight stage. The Municipality shall release this Buy-Back Agreement, after such completion upon receiving a written request after the Purchaser. The Purchaser is responsible for all expenses of registering the release of this Buy-Back Agreement. However, the Municipality shall continue to hold the security for the Site Development Proposal as provided for in the Agreement of Purchase and Sale until the Site Development and Landscaping have been completed to the satisfaction of the Municipality's Manager, Corporate Real Estate.
 11. If at any time after the completion of the Purchaser's Development the Purchaser or its assignees or successors in title, plan to construct any additions, expansions, renovations, or to construct additional buildings on the Property, or to reconstruct or alter the Purchaser's Development then the Purchaser or the subsequent owner(s) of the Property, as the case may be, shall submit to HRM Corporate Real Estate 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.

12. 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 its successor) at its sole discretion, and the larger development or alternative use complies with the Park's Site Development and Building Standards and covenants.
13. Both parties to this Buy-Back Agreement understand and agree that the terms, conditions and covenants of this Buy-Back Agreement shall survive the closing of the transaction contemplated by the Agreement of Purchase and Sale.
14. Time shall be of the essence of this Buy-Back 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.
15. This Buy-Back Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
16. Each of the parties shall, from time to time, at its own cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Buy-Back Agreement.
17. No provisions of this Buy-Back Agreement and no action by the parties hereto will establish or be deemed to establish a partnership, joint venture, principal agent relationship or employer-employee relationship in any way or for any purpose whatsoever between the Municipality and the Purchaser or between the Municipality and a third party.
18. Nothing in this Buy-Back Agreement is to be construed as authorizing the Purchaser or any third party to contract for or to incur any obligation on behalf of the Municipality or to act as an agent for the Municipality.

IN WITNESS WHEREOF the Municipality and the Purchaser hereto have executed this Buy-Back Agreement at the hands of their respective duly authorized officers.

SIGNED, SEALED and DELIVERED

| | | |
|---------|---|--------------------------------------|
| |) | [PURCHASER'S NAME] |
| |) | |
| |) | |
| |) | |
| |) | |
| _____ |) | _____ |
| Witness |) | Signature |
| |) | |
| |) | Name: _____ |
| |) | |
| |) | [Position Held] |
| |) | |
| |) | Date Signed: _____ |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | HALIFAX REGIONAL MUNICIPALITY |
| |) | |
| |) | |
| _____ |) | _____ |
| Witness |) | Mayor |
| |) | |
| |) | |
| _____ |) | _____ |
| Witness |) | Municipal Clerk |

CANADA

NOVA SCOTIA

HALIFAX REGIONAL MUNICIPALITY

On this ____ day of _____, 20__, before me, the subscriber, personally came and appeared _____, the subscribing witness(es) to the foregoing indenture who being by me sworn, made oath, and said that **Mike Savage, Mayor and Kevin Arjoon**, Municipal Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court of Nova Scotia

CANADA

NOVA SCOTIA

HALIFAX REGIONAL MUNICIPALITY

On this ____ day of _____, 20__, before me, the subscriber, personally came and appeared _____, the subscribing witness(es) to the foregoing indenture who being by me sworn, made oath, and said that **[Name of Company Official signing]**, holding the position of **[position title]** _____ signed the same and affixed the seal of **[Company name]** in his/her presence.

A Commissioner of the Supreme Court of Nova Scotia

CANADA

PROVINCE OF NOVA SCOTIA

COUNTY OF HALIFAX

I, **[Name of company Signing Official]**, of Halifax, in the County of Halifax, Province of Nova Scotia, make oath and say as follows:

1. **THAT** I am the **[Position held]** of **[Company Name]** (the “**Company**”);
2. That I am the duly authorized signing officer of the Company and am duly authorized to execute the annexed instrument for and on behalf of the Company;
3. That I have executed the annexed instrument for and on behalf of the Company and thereby bind the Company;
4. That the Company is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
5. That the lands described in the annexed instrument are not occupied by any shareholder as a matrimonial home nor is any shareholder entitled to use the lands as a matrimonial home and the lands have never been so occupied while any interest in the lands has been owned by the Company;
6. That this affidavit is sworn for the purpose of registering the annexed instrument pursuant to sections 79(1) and 83 of the Nova Scotia *Land Registration Act* and in compliance with the provisions of the Nova Scotia *Matrimonial Property Act* and the Nova Scotia *Vital Statistics Act*.

SWORN TO at _____, in the Province of Nova Scotia, this ___ day of ___ day of _____, 20__ before me:

A Barrister of the Supreme Court of Nova Scotia

[Name of company Signing Official]

SCHEDULE "A"
LEGAL DESCRIPTION

SCHEDULE "B"
SITE DEVELOPMENT AND BUILDING STANDARDS