

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: December 16, 2019

SUBJECT: **Administrative Order 50 Disposal of Surplus Property – PID 41079807,
4 Fernhill Drive, Dartmouth**

SUPPLEMENTARY REPORT

ORIGIN

September 9, 2014 – Regional Council approved the surplus status and disposal of 4 Fernhill Drive, Dartmouth through Section 4(a) Ordinary category of Administrative Order 50.

October 28, 2014 – Regional Council requested a staff report on the possibility of Lake City Employment Services Association acquiring adjacent land owned by HRM for the purpose of their non-profit activities.

February 24, 2015 – Information Report to Regional Council confirmed that to consider a less than market value transaction for the subject property Regional Council would be required to amend the motion of September 9, 2014, to change the categorization.

February 24, 2015 – Regional Council agreed to waive the requirement for a notice of rescission and directed that the surplus property located at 4 Fernhill Drive, Dartmouth, be categorized as Community Interest and dealt with in accordance with Administrative Order 50.

July 18, 2017 – Regional Council approved the conveyance of 4 Fernhill Drive, Dartmouth to Lake City Employment Services Association as per the terms and conditions set out in Table 1 of the staff report dated May 30, 2017, as amended by a motion of the Council to reduce the recommended sale price of \$10,000 plus HST to \$5,000 plus HST.

August 2, 2018 – Harbour East Marine Drive Community Council first reading to consider approval of the proposed amendment to the Land Use By-law for Dartmouth, to re-zone the property located at 4 Fernhill Drive, Dartmouth from R-2 and R-3 to C-2.

September 6, 2018 – HRM Harbour East Marine Drive Community Council approved amendment to the Land Use By-law for Dartmouth, to re-zone the property located at 4 Fernhill Drive, Dartmouth from R-2 and R-3 to C-2.

June 18, 2019 – Regional Council approved removal of 386 Windmill Road and 4 Fernhill Drive, Dartmouth from Centre Plan Package A and consider the zoning of these lots as part of Centre Plan Package B, and also placed a moratorium on site-specific amendments to municipal planning strategies while the process to adopt Package B is underway.

October 30, 2019 – Correspondence received from the Lake City Employment Services Association requesting amendments to the Agreement of Purchase and Sale.

LEGISLATIVE AUTHORITY

- *HRM Charter, S.N.S c.38, 2008 as amended:*

Section 63(1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that Council considers to be carrying on an activity that is beneficial to the Municipality.

- *Administrative Order 50 the Disposal of Surplus Real Property Administrative Order.*

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Amend the permitted intended use as set out in the terms and conditions of the conveyance of 4 Fernhill Drive, Dartmouth, Nova Scotia (currently identified as PID 41079807) to be for the delivery of Lake City Employment Services Association's programs and services for adults living with mental illness;
2. Amend the terms and conditions of the conveyance of the said property situate at 4 Fernhill Drive, Dartmouth, to remove the requirement to consolidate it with Lake City Employment Services Association's existing land, and instead to require the said Association to enter a Buy-Back Agreement; and
3. Release Lake City Employment Services Association from the Buy-Back Agreement dated June 7, 2001, applied to the previous conveyance of lands identified as PID 40522096 and a Portion of PID 00063354 Windmill Road, Dartmouth, Nova Scotia.

BACKGROUND

Following Council's reassignment of 4 Fernhill Drive, Dartmouth, ("the Property") from the Ordinary to the Community Interest category of Administrative Order 50, staff convened a public information meeting on September 28, 2016 and issued a formal Call for Submissions on October 8, 2016. By the application deadline of February 9, 2017, the Municipality received only one (1) proposal. It was from the applicant, Lake City Employment Services Association ("the Association"), which owns the property abutting the subject property upon which it operates a manufacturing facility that employs adults living with a mental illness. Clients also receive support through on-site job coaching, skills assessment, pre-employment training, work experience placements, and referrals to complementary programs and services.

The terms and conditions of the sale to the Association which were approved by Regional Council¹ on July 18, 2017, included the requirements that the Association use the Property for the expansion of its parking lot and manufacturing plant, that the Property be consolidated with the abutting land it already owns, and

¹ Recommendation report to Regional Council, Administrative Order 50 Disposal of Surplus Real Property – PID 41079807 4 Fernhill Drive, Dartmouth, dated May 30, 2017, p.5. The amendment to the sale price is recorded in the Minutes of Regional Council's meeting of July 18, p.19.

that the Association apply for rezoning of the Property.

The Association received approval from the Harbour East Marine Drive Community Council to re-zone the Property from R-2 and R-3 to C-2 in 2018 and an Agreement of Purchase and Sale was negotiated. However, the sale has not closed, because in October 2019 the Association requested amendments to the Agreement of Purchase and Sale which constitute a substantive change to the terms and conditions of sale previously approved by Regional Council, and as such requires Regional Council's approval. Hence the need for this report.

Specifically, the Association has requested that the terms and conditions of the sale approved by Regional Council be amended to:

1. expand the Association's permitted use of the Property to allow for affordable and supportive housing for the clients served by the Association and a range of employment and client services; and
2. to permit future sub-division of the Property to permit residential development, if sub-division is required for financing or to meet the requirements of the HRM Centre Plan and to allow, subject to the Sub-division and Zoning by-laws, and Centre Plan, any land remaining from such sub-division to be consolidated with the Association's existing property, if required by the Association.

The Association's request, dated October 30, 2019, is included in its entirety as Attachment 1 of this report.

DISCUSSION

1. Intended Use

Staff is recommending that Regional Council approve of the sale of the Property to the Association on the same terms and conditions which were approved following a public hearing on July 18, 2017 except for the following changes:

- (i) that the intended use be changed to remove specific reference to expansion of the existing manufacturing facility and replace with the delivery of the Association's programs and services to adults living with mental illness²;
- (ii) that there be no requirement to consolidate the Property with the lands the Association already owns;
- (iii) that there be no requirement that the Association apply for rezoning;
- (iv) that the Association enter into a Buy-Back Agreement.

In considering an amendment to the terms and conditions of sale, staff identified the following factors:

- the acquisition of the Property which abuts lands already owned by the Association, could reduce the Association's operating costs by enabling consolidation of operations in one location and facilitate expansion options;
- the acquisition was time-sensitive insofar as a sale or conveyance of the Property to another party would inhibit expansion. This might explain why there are no immediate plans with respect to either the expansion of the current facility or entry into the special needs/affordable housing sector;
- the descriptor "inclusion of adults with mental illness" is broad and can encompass a range of adaptive or supportive programming, but, as the Association's name suggests "employment" has been the central and recurring activity;

² The descriptor "adults living with mental illness" is a direct quote from the Association's Articles of Incorporation.

- there was only one applicant in the Call for Submissions;
- Regional Council's interest in increasing the number of affordable housing units in HRM;
- the Association's long-standing commitment to serving clients with special needs and the potential for on-site or abutting residential accommodations for these same clients; and
- the implications of including the subject property in Centre Plan "Package B" are unknown and a site-specific re-zoning is not advised at this time.

Proposed Buy-Back Agreement

Typically, HRM does not donate or discount property sales for speculative purposes. The Association's proposal made no reference to housing development on the Property and they have no immediate design, capital or operating plan. Further, the Association has no experience with residential property development or operation.

Given uncertainty with respect to the Association's ability to develop housing on the Property and any implications of the Centre Plan, it is proposed that the restrictive requirements with respect to consolidation or sub-division be removed and instead require a Buy-Back Agreement.

If the Association does not pursue entry into the affordable housing sector, it will in all probability use the land in relation to its existing facility expansion or related programming, subject to the zoning applied through the Centre Plan Package B process. However, for consistency and to protect the public interest, it is proposed that a Buy-Back Agreement be applied to the conveyance with a mandatory review 25-years after the Closing Date to consider continuation, release or amendment,

Although in its initial proposal the Association requested that any Buy-Back Agreement be limited to 5 years' duration, staff is recommending a term of 25 years for consistency with policy. However, should Council wish to provide an incentive to encourage timely development of the vacant Property, an alternative is included in the Alternatives section of this report.

For clarification, conditions under which the Municipality may exercise its option to purchase the Property under a Buy-Back Agreement include, but are not limited to, the following:

- the Association loses or relinquishes its non-profit and charitable registration, or there is a change in control of the Association, or the Association's operations cease or in the event of its insolvency or receivership;
- the Association ceases to provide the beneficial activity as declared in the statement of intended use, or if the Association intends or attempts to dispose of, sell or convey the Property;
- the Association defaults under a financing agreement secured by the Property or judgements are entered against the Association; or
- the Association applies for consolidation or subdivision of the Property.

The Buy-Back Agreement to be negotiated with the Association will be substantially similar to the sample shown in Attachment 2 of this report.

Zoning Implications

In addition to any conditions for use of the property that Council may wish to establish as a condition of sale, permitted uses are also set out in zoning regulations.

The subject property was rezoned from R-2 and R-3 to C-2 in 2018 to accommodate the expansion of the manufacturing facility that was indicated as the operator's sole intent at the that time. The present zoning allows for the manufacturing operations as well as some residential uses which could accommodate the operator's updated concept for residential development as currently understood. However, it must be noted that the operators have not yet developed any proposal for residential uses to the extent where compliance

with zoning can be determined. It should also be noted that while land uses otherwise permitted by zoning can be limited as a condition of sale, uses not permitted under the zoning cannot be allowed as a condition of sale.

In addition to the implications of the current zoning, this property will be subject to further zoning changes when the Centre Plan Package B is brought forward for Council's consideration later this year. These changes could impact development capacity if construction permits under the current zoning are not in place at the time of the first notice of Council's intention to adopt the new bylaw and the operator's development aspirations are not aligned with new regulations proposed in Package B.

Notwithstanding the foregoing, the current recommendations do not represent any material conflict with the existing zoning requirements.

Proposed Release of 2002 Buy-Back Agreement – Windmill Road, Dartmouth

This is considered a housekeeping matter.

In compiling a history of ownership and use in regard to 4 Fernhill Drive, Dartmouth, reference was made to the Association's 2002 acquisition of two other parcels of remnant municipal land at less than market value which abut the manufacturing and retail facility located at 386 Windmill Road. A Buy-Back Agreement was applied to the conveyance of PID 40522096 and a portion of PID 00063354 Windmill Road, Dartmouth. The purpose of the sale was to enable an expansion of the existing parking lot, enhance access to delivery vehicles, and potential expansion of existing buildings. The Association had until June 7, 2011, being 10 years after the acquisition date, to fulfill its obligations under that Agreement. Formal release of the expired Agreement will remove the encumbrance and assist the Association should financing secured by 386 Windmill Road, Dartmouth, be required for current or future capital improvements.

FINANCIAL IMPLICATIONS

The net proceeds from the sale shall be credited to the Capital Fund Reserve, Q526. Applicable vendor adjustments to the Purchase Price may include, but are not limited to, valuation and/or appraisal, survey, easements, environmental planning review, grading deficiencies, wetland management, and vendor's brokerage, legal, marketing and administrative costs. Vendor adjustments or deficiency allowances, if required, shall be to a maximum of 15 percent of the purchase price. HST applies to this transaction.

There are no incremental costs to HRM. The \$5,000 Purchase Price plus closing costs of \$5,000 + HST will be due on closing upon receipt of an itemized invoice issued by HRM.

Budget Summary, Capital Fund Reserve, Q526

Balance in reserve, November 30, 2019	\$ 4,368,392
Recommendation per report	\$ <u>5,000</u>
Projected net available balance, March 31, 2020	\$ 4,373,392

Obligation Reserve – Capital Fund Reserve Q526

The reserve is funded by the sale of land in HRM, other than Business/Industrial Parks or sale of land conveyed to HRM for parks, playgrounds or similar public purposes. Several other large properties are now excluded from deposit to this reserve and are being redirected to the Strategic Capital Reserve Q606. The Capital Reserve Fund is governed by the Halifax Regional Municipality Charter Section 120(1), (3) and (4). Withdrawals from the reserve are for capital expenses for which the Municipality may borrow. The recommendation does not have a negative impact to the reserve balance as this would be an unbudgeted contribution to the reserve.

RISK CONSIDERATION

Risks are considered to be low. As recommended the Buy-Back Agreement will provide HRM with the right of first refusal should the Association consider subdividing or disposing of the property or any interest therein.

COMMUNITY ENGAGEMENT

HRM staff met with a representative of the Lake City Employment Services Association and the planning consultant retained by the Association in September 30, 2019, to discuss the Association's request to amend the terms and conditions of conveyance. The Association was asked to put their request in writing and to provide a synopsis of their understanding of the opportunities and/or constraints zoning does or may have on the Association's intended use of 4 Fernhill Drive, Dartmouth.

ENVIRONMENTAL IMPLICATIONS

None. The property is to be sold "as is" with no warranty as to its condition. The Association will have an opportunity to conduct its due diligence prior to the closing date.

ALTERNATIVES

1. Regional Council could decline changes to the terms and conditions of sale approved July 18, 2017.
2. Regional Council could amend the terms of a proposed Agreement of Purchase and Sale and Buy-Back Agreement to enable the Municipality to reacquire the Property, 4 Fernhill Drive, Dartmouth, if the Association has not commenced development of the Property within a defined period, for example five (5) years. This approach could discourage speculative acquisition and encourage faster development of the Property.

If Council selects this option, the draft Agreement of Purchase and Sale and the Buy-Back Agreement would be revised accordingly.

ATTACHMENTS

1. (a) Correspondence to HRM from Liam O'Rourke, Executive Director, Lake City Employment Services Association, dated October 30, 2019.
(b) Attachment from Shelley Dickey, Land Use Planning, Current Planning and Development Regime Related to 4 Fernhill Drive and 386 Windmill Road, Dartmouth, dated October 30, 2019.
2. Draft Buy-Back Agreement.

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Peta-Jane Temple, Team Lead Grants & Contributions, Finance, Asset Management & ICT 902.490.5469
John Dalton Real Estate Officer, Finance, Asset Management & ICT 902.490.5477

October 30, 2019

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Senior Real Estate Officer
HRM Corporate Real Estate

Peta-Jane Temple
Team Lead Grants and Contributions
Finance, Asset Management and ICT

**Re: Lake City Works - 386 Windmill Road/ 4 Fernhill Drive- Dartmouth
Considerations related to the draft Agreement of Purchase and Sale.**

This letter is further to our meeting of September 30th, 2019 where we discussed our evolving vision for the property at 4 Fernhill Drive to include supportive and affordable housing under the umbrella of Lake City Works. Specifically we discussed the implications of the draft Agreement of Purchase and Sale for 4 Fernhill Drive in relation to the uses that would be permitted on this site, and to the prohibition of future subdivision.

The first requirement for Lake City Works to complete the purchase of 4 Fernhill Drive was the rezoning of the property from R-2 and R-3 to C-2 (General Business) so it can be used for the purposes of the organization which currently consist of office, service, retail and fabrication. This rezoning was approved by Harbour East and Marine Drive Community Council in September 2018 and is now in effect.

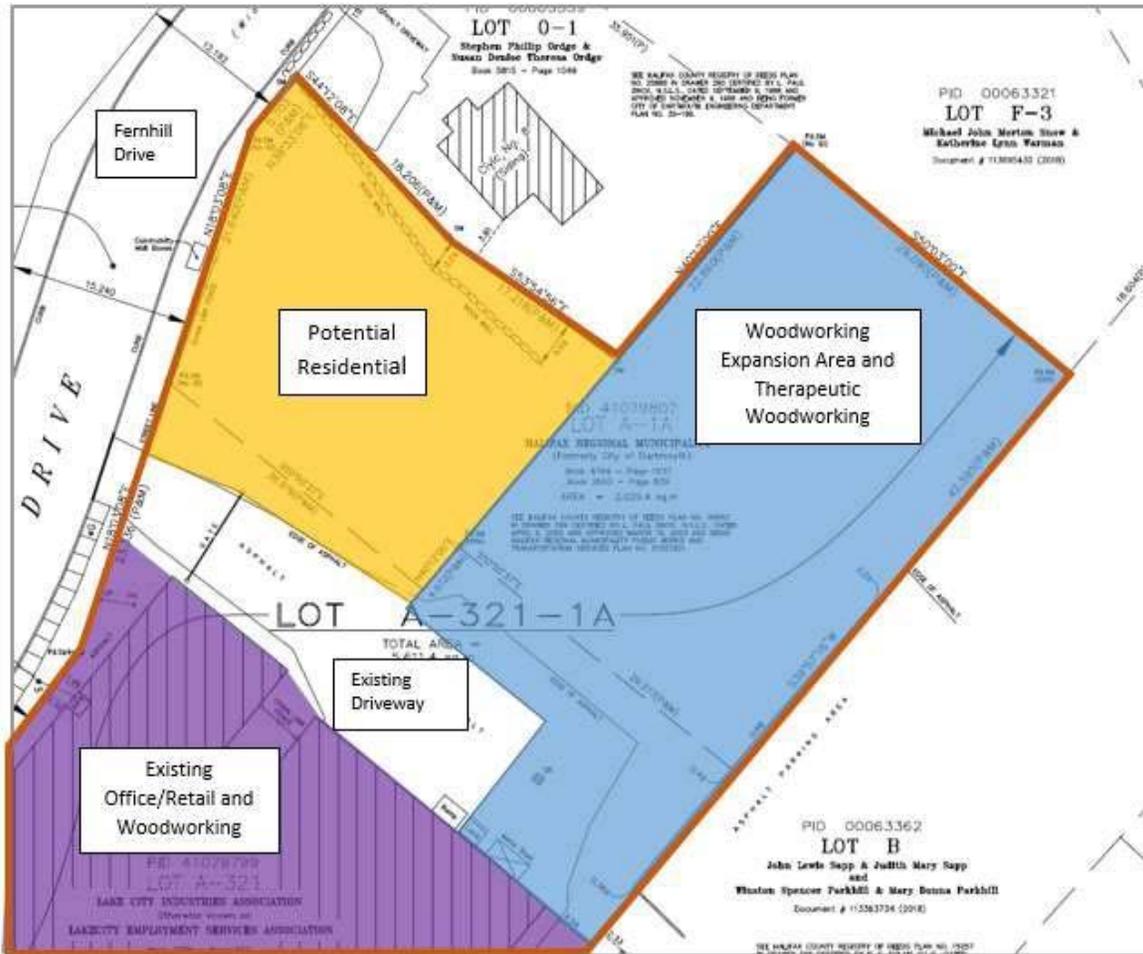
The second requirement is the consolidation of the 4 Fernhill Drive property with 386 Windmill Road. A consolidation application was submitted to HRM Development Services for review and approval. It is our understanding that approval of this consolidation is pending and will be finalized once the sale of 4 Fernhill Drive is completed.

These properties are both located in the Centre Plan area. The April 2019 draft of Centre Plan (Package "A") proposed that both properties be included in the Windmill Road "Corridor". This zoning would have limited the ability to expand the existing woodworking portion of the facility onto 4 Fernhill Drive by right (as secured in the rezoning approved in September 2018), and would have removed the ability to have more than one building (for any use) on the consolidated property.

In response to these limitations, the Community Planning and Economic Standing Committee recommended the removal of 386 Windmill Road and 4 Fernhill Drive from Package "A" of Centre Plan, and to defer its consideration until Package "B". This was accepted by Committee of the Whole at their June 18th, 2019 meeting. As a result the current C-2 zoning requirements of the Dartmouth Land Use Bylaw continue to apply to the development and expansion of the Lake City Works facility until Package "B" is approved by Regional Council.

Lake City Works intends to consider the viability of residential development on one section of the 4 Fernhill Drive portion of the consolidated lot. (See conceptual land use plan). This would be in addition to the expansion of manufacturing capacity, and the expansion of other programs within the mandate of

Lake City Works to provide a range of employment and client services, such as therapeutic woodworking and community maker spaces.



Lake City Works Dartmouth 386 Windmill Road and 4 Fernhill Drive

Consolidated Lot - Conceptual Future Land Use Plan

It is envisaged that residential development would allow Lake City Works to provide non-profit, supportive, and affordable housing for its clients and others in the north end Dartmouth community who require this accommodation in conjunction with the employment training and opportunities currently offered. Housing on our site would allow Lake City Works to respond to known housing needs, and to provide more holistic support for our clients in this location.

In considering this vision for non-profit housing on this site there are two limiting provisions of the current draft APS which have been identified.

The first is Clause 1 which states: *“Intended Use” means the use of the Property for the future expansion of the Purchaser’s existing woodworking, manufacturing, and production facility which provides*

employment opportunities and assistance in securing employment for persons with special needs, which the Purchaser is currently operating on the Purchaser's Lands." It is our understanding that this provision would not allow the development of housing on 4 Fernhill Drive. Furthermore we would like to ensure that we would be permitted to expand a range of current and developing employment and client services which are not manufacturing or production onto the consolidated property.

The second is Clause 10 which states in part: *"The Purchaser covenants and agrees that the consolidated parcel to be created by the subdivision process shall not be re-subdivided."* It is likely that for financing requirements or to meet the provisions of the pending Centre Plan for only one building on a lot, that housing development would require the re-subdivision of a portion of the consolidated property.

Based on these points, Lake City Works is requesting that amendments to the draft APS be considered which:

1. Expand the "intended use" definition in the APS to permit additional uses of the consolidated property which allow specifically for affordable and supportive housing, and a range of employment and client services, and;
2. Enables future re-subdivision of the property for the purpose of such a housing development if required for reasons such as financing or to meet the requirements of future planning regulations under Centre Plan.

Thank you for your continued dialogue with Lake City Works and for your efforts to help ensure that this property can be developed for a variety of uses which support the work of Lake City Works - a significant and land standing social enterprise organization serving varied clients in Dartmouth and the remainder of HRM.

Regards,



Liam O'Rourke
Executive Director
Lake City Works

Current Planning and Development Regime related to 4 Fernhill Drive and 386 Windmill Rd., Dartmouth

- Both of these properties are currently zoned as C-2 (General Business) under the Dartmouth Land Use Bylaw.
- The property at 386 Windmill Road, which currently houses Lake City Works, has been zoned C-2 for many years while the property at 4 Fernhill Drive was rezoned to C-2 by Harbour East and Marine Drive Community Council in September, 2018 from R-2 (Two Family Residential) and R-3 (Multiple Family Residential – Medium Density). This rezoning was required to permit the sale of 4 Fernhill Drive from HRM to Lake City Works.
- The C-2 zone allows a wide range of residential and commercial/industrial uses including multiple family residential, group homes up to 12 residents, and all components of the current Lake City Works facility which includes office, service, retail and manufacturing.
- The development or expansion of office, retail and manufacturing uses is permitted by right in the C-2 zone and is subject to the provision of landscaped buffers where they abut residential uses and zones. Buildings may cover 100 percent of the lot and there are no height limits except if the primary function of the building is office uses (3 storey height limit). More than one commercial or industrial building is permitted on the lot and one residential building would be permitted on the lot in conjunction with commercial and industrial buildings.
- Multiple family residential uses with three or more dwelling units (excluding group homes) are enabled in the C-2 zone only by development agreement under policy IP-5 of the Dartmouth Municipal Planning Strategy. There is no by-right ability for multiple family residential uses in this zone.
- Both of these properties were removed from Package “A” of the pending Centre Plan allowing their consideration under Package “B”. The current planning policies and regulations under the Dartmouth MPS and LUB will continue to apply until Package “B” is approved by Regional Council.

This **Buy-Back Agreement** is dated this _____ day of _____ 20_____

BETWEEN:

Lake City Employment Services Association
(hereinafter called the "**Association**")

OF THE FIRST PART

-and-

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

OF THE SECOND PART

WHEREAS by an Agreement of Purchase and Sale of even date herewith (the "**Agreement of Purchase and Sale**") the Municipality agreed to sell, and the Association agreed to purchase the Property currently identified as apparent PID 41079807, being a parcel of land situate at civic # 4 Fernhill Drive, Dartmouth, in the County of Halifax, Province of Nova Scotia, which is more particularly described in Schedule "A" attached hereto (the "**Property**");

AND WHEREAS in the Agreement of Purchase and Sale the Association agreed to enter into this Buy-Back Agreement with the Municipality (this "**Buy-Back Agreement**");

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

A. Buy-Back Agreement as First Charge Upon the Property

1. The Association hereby grants to the Municipality the first option and unrestricted right to repurchase the Property on the terms set out in this Buy-Back Agreement.
2. The Association shall register this Buy-Back Agreement at the Land Registration Office in and for the County of Halifax at its expense as a first charge against the title to the Property forthwith upon the closing of the Agreement of Purchase and Sale. Alternatively, the Municipality may, in its sole discretion, permit the Association to register a Notice of this Buy-Back Agreement instead of registering the full text.

B. Term

3. This Buy-Back Agreement shall have an initial term of twenty-five (25) years from the Closing Date of the Agreement of Purchase and Sale (the "**Initial Term**"). On or about the expiration of the Initial Term, Regional Council of the Halifax Regional Municipality

shall consider continuation, amendment or release of the Buy-Back Agreement, following which this Agreement shall accordingly be continued, amended or released.

C. Conditions of the Sale of the Property to the Association

4. The Municipality in conveying the Property to the Association for the less than market value purchase price of Five Thousand Dollars (\$5,000.00) in consideration for the Association to use the Property for the delivery of programs and services to adults with mental illness (the "Intended Use"). The Association covenants and agrees to operate the Property continuously in accordance with the Intended Use throughout the Initial Term of this Agreement and any extension or renewal thereof.
5. The Association covenants and agrees to maintain its status as a non-profit society registered and in good standing with the Nova Scotia Registry of Joint Stock Companies and as a registered Canadian charity in good standing with Canada Revenue Agency throughout the initial term of this Agreement and any extension, continuation or renewal thereof.
6. The Association covenants and agrees to comply with all Municipal By-Laws, Policies, and Administrative Orders applicable to the Property or the use of the Property and to strictly comply with all environmental laws, regulations and work orders.
7. This Buy-Back Agreement shall be in priority to all other encumbrances and charges registered against the title to the Property.
8. If the Association consolidates the Property with other lands owned by Association, or subdivides the Property, this Buy-Back Agreement shall attach to and encumber the entire parcel created by such consolidation, or each of the parcels created by such subdivision, as the case may be, and the Association shall forthwith take all steps required to register this Buy-Back Agreement on all parcels thereby created.

D. Postponement for the Purpose of Financing

9. Notwithstanding s. 7 of this Agreement, during the initial term of this Buy-Back Agreement or any renewal or extension thereof, the Association may apply in writing to the Chief Administrative Officer of the Municipality for a postponement of this Buy-Back Agreement to secure financing of up to sixty-five percent (65%) of the Property's market value as of the date of the request. Authorization to approve or disapprove the requested postponement shall be in the sole discretion of the Chief Administrative Officer of the Municipality

E. Notice of Default

10. Any secured financing arrangements and contracts shall include the requirement that the secured lender will serve notice upon the Municipality of any default by the Association and the secured lender shall give the Municipality the option to cover any default by the Association under such financing arrangements, reserving to the Municipality, however, all rights of recourse against the Association.

11. The Association agrees to notify the Municipality in writing forthwith in the event of default of any mortgage, line of credit or debt instrument, loan guarantee, or other financial instrument or encumbrance secured by the Property, and forthwith upon the happening of any other event or default resulting in any charge, lien or other encumbrance registered against title to the Property, such as, but not limited to, real property tax arrears, builder's liens, judgments, orders, work orders issued by any government or government agency, claims, actions or demands which may be brought against the Association.

F. Repurchase of the Property

12. This Buy-Back Agreement gives the Municipality an exclusive, unencumbered and unrestricted right in its sole discretion to repurchase the Property for \$0.02 cents per square foot, plus any capital improvements (as defined in Appendix "X" to this Buy-Back Agreement), made to the Property by the Association (less annual depreciation and less any municipal contributions to the Association which may have been made in any form, and less any payment(s) made by the Municipality to cover default under the Association's financing, should the Municipality have chosen to cover such default).
13. The Municipality may in its sole discretion exercise its rights to buy back the Property during the Initial Term or any renewal or extension thereof, if the Association:
 - a) does not use, or ceases to use, the Property for the Intended Use as defined herein being the beneficial activity for which the Council of the Halifax Regional Municipality gave its consideration to a less than market value sale of the Property pursuant to subsection 63(1) of the *Halifax Regional Municipality Charter*, or
 - b) substantially disposes of the assets of the Association or discontinues the operations of the Association; or
 - c) ceases to operate as a non-profit or charitable society; or
 - d) defaults on any loan, mortgage, line of credit, or other debt or financial instrument secured against the title to the Property, or if a builder's lien, judgment or court order is registered against the title to the Property which the Association does not discharge within thirty (30) days of registration of same; or
 - e) considers or attempts the sale or other conveyance or disposition of the Property or any interest therein; or
 - f) if there is a change in control of the Association; or
 - g) is in default of any of the terms and conditions of the Agreement of Purchase and Sale or this Buy-Back Agreement; or
 - h) applies for sub-division of the Property or its consolidation with other lands.

14. If the Municipality chooses to exercise its right to repurchase the Property pursuant to this Buy-Back Agreement, it shall provide thirty (30) days written notice to the Association or such other notice as the Municipality deems appropriate in its sole discretion (the “**Notice Period**”). The Association shall deliver up clean and vacant possession of the Property, together with all fixtures and improvements thereon, and convey the Property to the Municipality by Warranty Deed free and clear of encumbrances, to be drawn at the expense of the Association, within five (5) business days following the Notice Period or within such other time as the Municipality may direct in writing (the “Repurchase Date”). Adjustments for taxes, rates, rental, fuel and other expenses normally adjusted for in real estate transactions in Nova Scotia shall apply. The Association shall reconvey the Property to the Municipality free and clear of any environmental contamination and in a condition not worse than the condition the property was in at the time of its conveyance to the Association.
15. If the Municipality determines, in its sole discretion, that the Property in its condition as at the Repurchase Date, is unacceptable, the Repurchase Date shall be extended for an additional six (6) weeks, within which the Association shall at its own expense reinstate and remediate the Property to a condition satisfactory to the Municipality. If the Association fails to remediate and reinstate the Property to the satisfaction of the Municipality within the time limited therefor, the Association, if so directed by the Municipality, shall convey the Property to the Municipality for the sum of One Dollar (\$1.00) and shall pay for the remediation and reinstatement of the Property in the amount which exceeds the sum of Five Thousand Dollars (\$5,000.00).

G. General Terms

16. 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.
17. This Buy-Back Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
18. This Buy-Back Agreement shall be a burden upon and run with the Property and shall ensure to the benefit of the Municipality and shall be binding upon the Association, and its successors and assigns.
19. The Association warrants it has full corporate authority to enter into this Buy-Back Agreement.
20. This Buy-Back Agreement may only be changed by a written agreement executed by both parties hereto.

IN WITNESS WHEREOF the parties hereto have properly executed this Buy-Back Agreement by their respective duly authorized officers as of the date first above written.

SIGNED, SEALED and DELIVERED
in the presence of:

Lake City Employment Services Association

Witness

Print Name:
Print Title:

Witness

Print Name:
Print Title:

SIGNED, SEALED and DELIVERED
in the presence of:

HALIFAX REGIONAL MUNICIPALITY

Witness

Witness

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

ON THIS _____ day of _____, 20____, before me, the subscriber, personally came and appeared, _____, and _____ the subscribing witnesses to the foregoing Indenture, who, having been by me duly sworn, made oath and said that _____ and _____ of the Halifax Regional Municipality, signed, sealed and delivered the same in the____ presence.

A Commissioner of the Supreme Court of
Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

I CERTIFY that on this ____ day of _____, 20__, **Lake City Employment Services Association**, one of the parties to the foregoing and annexed Buy-Back Agreement, by its duly authorized officers, _____ and _____, on its behalf signed and sealed the said indenture in my presence, and I have signed as a witness to such execution.

A Commissioner of the Supreme Court of
Nova Scotia

OR

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

ON THIS ____ day of _____, 20__, before me, the subscriber, personally came and appeared, _____, and _____ the subscribing witnesses to the foregoing Indenture, who, having been by me duly sworn, made oath and said that _____ and _____ the duly authorized officers of the **Lake City Employment Services Association**, signed, sealed and delivered the same in h____ presence.

A Commissioner of the Supreme Court of
Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

I, _____, of _____, _____,
make oath and say as follows:

1. THAT I am the _____ of Lake City Employment Services Association (the “**Company**”);
2. THAT I am a 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 Halifax, in the Province of
Nova Scotia, this ____ day of
_____, 20____ before me:

A Barrister of the Supreme Court of Nova
Scotia

SCHEDULE "A"

Parcel Description

ALL that certain lot, piece and parcel of land situate, lying and being in the City of Dartmouth, County of Nova Scotia and being shown as Lot A-1A on a Plan of Survey of Lot A-321 and Lot A-1A, a consolidation and subdivision of Lots A-1 & A-2, lands of Halifax Regional Municipality and Lot A-3, lands of Lake City Industries Association, Fernhill Drive-Windmill Road dated April 5, 2002 and filed in the Registry of Deeds as Plan Number 35653 in Drawer 389; said Lot A-1A being more particularly described as follows:

BEGINNING at a point on the south eastern side of Fernhill Drive, at the southwest corner of Lot O-1 as shown on said plan;

THENCE South 44 degrees 12 minutes 08 seconds East 18.206 metres to a point;

THENCE South 53 degrees 54 minutes 56 seconds East 17.218 metres to a point at the southeast corner of Lot O-1;

THENCE North 40 degrees 12 minutes 00 seconds East 22.860 metres to a point at the northeast corner of Lot O-1;

THENCE South 50 degrees 03 minutes 00 seconds East 29.090 metres to a point on the western boundary of Lot B as shown on said plan;

THENCE South 39 degrees 57 minutes 16 seconds West 42.595 metres to a point;

THENCE North 50 degrees 50 minutes 37 seconds West 29.277 metres to a point;

THENCE in a southwesterly direction 4.572 metres to a point;

THENCE North 50 degrees 50 minutes 37 seconds West 26.976 metres to a point on the southeastern side of Fernhill Drive;

THENCE North 18 degrees 03 minutes 08 seconds East 21.640 metres to a point;

THENCE North 38 degrees 33 minutes 08 seconds East 5.703 metres to the place of beginning.

CONTAINING 2029.4 SQUARE METRES .

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HALIFAX COUNTY

Registration Year: 2003

Plan or Document Number: 35653

APPENDIX “X”

Amortization Rates: Capital Improvements

Asset Class	Items	Useful Life
Parking Lot	Improvements to land such as asphalt or gravel.	20 years
Structural	Foundation, Load-bearing walls, floor and roof framing system.	40 years
Roof	Covering on the upper most part of the building that protects the building and its contents from the effect of weather.	40 years
Interior	Interior architecture including elevator, stairs, non- load bearing walls, ceilings, flooring, fixed cabinetry and millwork	15 years
Exterior	Exterior architecture elements that enclose the structure including windows, exterior doors. Excludes roof.	20 years
Electrical	Building systems: wiring, lighting, security alarm or camera system	40 years
Mechanical	Building systems: heating, ventilation, air conditioning, plumbing, waste disposal, fixed sprinkler system.	20 years
Site Work	Landscaping improvements including walkways, storm drainage, exterior lighting/lampposts, wastewater, well and septic systems, fixed (permanent signage). Excludes parking lot.	20 years
<p>Excludes equipment such as office furniture, soft furnishings (e.g. window coverings, carpet), fixtures, appliances, audio-visual or computer hardware and software, interior decorating (e.g. painting or decorative installations), exterior painting, landscape plants or outdoor furnishings.</p> <p>Excludes: operating, recurring preventative maintenances and minor repairs.</p>		

The “amortization rate” is applied to the cost of the capital improvement using the following formula:

$$\frac{\text{Cost of Item}}{\text{Lifecycle Expectancy}} = \text{Annual Depreciation}$$

Example: a replacement roof costs \$100,000

$$\frac{\$100,000}{20 \text{ Years}} = \text{depreciates } \$5,000 \text{ per year}$$

In this example, the asset (roof) would be valued at \$50,000 after 10 years.

Note: The value of donated goods and services towards all or a portion of a capital improvement shall be verified by documentation as of the time of the donation (not retroactive estimates) and may be subject to independent verification in the absence of an income tax receipt or vendor’s original invoice, receipt or similar instrument.