

BUY-BACK AGREEMENT

Between:

(Purchaser)

and

HALIFAX REGIONAL MUNICIPALITY

(Vendor)

FOR

PARCEL: _____

Phase 13

Burnside Industrial Park

Dartmouth, Nova Scotia

BUY-BACK AGREEMENT

BETWEEN:

a body corporate
(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:

- A. The Municipality is responsible for the sale and management of certain lands in the Burnside Industrial Park, Nova Scotia, (the “**Park**”).
- B. The Municipality has developed the Park to provide serviced industrial land to accommodate business growth and new investment into the region. To promote the efficient allocation and use of lands for immediate development purposes, the Municipality enforces timelines for construction commencement and completion by the utilization of a buy-back agreement.
- C. By an Agreement of Purchase and Sale (the “**Agreement of Purchase and Sale**”) between the parties hereto, the Municipality agreed to sell, and the Purchaser agreed to purchase a parcel of land in the Park (the “**Property**”) which is more particularly shown as Lot _____, on the Plan of Survey attached hereto as Schedule “A” (the “**Plan of Survey**”).
- D. The Purchaser has agreed to develop the entire 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**”).
- E. The Purchaser has agreed to execute this Buy-Back Agreement pursuant to the Agreement of Purchase and Sale.

THIS AGREEMENT WITNESS 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 to the other party, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Purchaser and the Municipality hereby agree as follows:

A. Buy Back Agreement as First Charge Upon the Property

1. The Purchaser agrees to 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 Purchaser's expense, as a recorded interest on title to the Property at the Halifax County 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 on title to the Property.

B. Construction of Development

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 "**Development**") which includes a permanent building on the Property of the standards 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 described 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 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 Corporate Real Estate business unit ("**HRM Corporate Real Estate**").
4. The Purchaser agrees to commence the Development on the Property by fully installing, at a minimum, the footings and foundation for the Building ("**Commence**"), having at least the Minimum Completed Building Area in accordance with the final approved Site Development Proposal and the Site Development and Building Standards, no later than eighteen (18) months (the "**Commencement Date**") after the closing date of the Agreement of Purchase and Sale (the "**Closing Date**").
5. The Purchaser agrees to fully complete the entire Development, including the construction of the Building which meets 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 ("**Complete**") no later than thirty-six (36) months after the Closing Date (the "**Completion Date**").

C. Right to Buy-Back the Property

6. This Buy-Back Agreement gives the Municipality an exclusive, unencumbered and unrestricted right to repurchase the Property in its sole discretion at any time if the

Purchaser does not Commence the Development by fully installing the footings and the foundation of the Building having at least the Minimum Completed Building Area in accordance with the approved final Site Development Proposal and the Site Development and Building Standards to the satisfaction of HRM Corporate Real Estate by the Commencement Date (or extended Commencement Date pursuant to the payment of a Premium Payment described below); and/or if the Purchaser does not construct the Building having at least the Minimum Completed Building Area and in accordance with the approved final Site Development Proposal and the Site Development and Building Standards to the completion of the roof tight stage (“**Roof Tight Stage**”) to the satisfaction of HRM Corporate Real Estate by the Completion Date (or extended Completion Date pursuant to the payment of Premium Payments described below). The Municipality shall also have the right to buy back the Property if the Purchaser fails to comply with the Agreement of Purchase and Sale, or this Buy-Back Agreement, or the approved final Site Development Proposal, or the Site Development and Building Standards to the satisfaction of HRM Corporate Real Estate.

D. Premium Payments to Extend Commencement/Completion Dates

7. As an alternative the Purchaser may extend the Commencement Date and/or the Completion Date for the Development as set out below by paying the Municipality one or more 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 shall be applied to such assessments to determine the Premium Payment for each applicable extension period. HST is payable in addition to the Premium Payments.
8. If the Purchaser does not Commence the Development by fully installing the footings and foundation of the Building having the Minimum Completed Building Area in accordance with the final approved Site Development Proposal and the Site Development and Building Standards by the Commencement Date (18 months from the Closing Date) in compliance with the Agreement of Purchase and Sale and this Buy-Back Agreement, the Purchaser may preclude the Municipality from exercising its rights to buy-back the Property for an additional period of twelve (12) months by paying a Premium Payment to the Municipality on or before the Commencement Date.
9. If the Purchaser has paid the Premium Payment but has not Commenced the Development by fully installing the footings and foundation of the Building having the Minimum Completed Building Area in accordance with the final approved Site Development Proposal, the Site Development and Building Standards, and in compliance with the Agreement of Purchase and Sale and this Buy-Back Agreement on or before the 30th month following the Closing Date, the Municipality may exercise its right to buy-back the Property at anytime thereafter.
10. If the Purchaser (having previously paid a Premium Payment on or prior to the Commencement Date) has Commenced the Development by fully installing the footings and foundation of the Building having the Minimum Completed Building Area in

accordance with the final approved Site Development Proposal, the Site Development and Building Standards in compliance with the Agreement of Purchase and Sale and this Buy-Back Agreement on or before the 30th month following the Closing Date, but does not construct the Building to the Roof Tight Stage within 36 months following the Closing Date, the Purchaser may preclude the Municipality from exercising its right to buy-back the Property by paying an additional Premium Payment on or before the 36th month following the Closing Date. This Premium Payment will extend the Completion Date within which to complete the entire Development for an additional twelve (12) months from the Completion Date, for a total of 48 months from the Closing Date.

11. If the Purchaser constructs the Building (having the Minimum Completed Building Area in accordance with the final approved Site Development Proposal, the Site Development and Building Standards) to the Roof Tight Stage by the Completion Date, or by any extended Completion Date (arranged through the payment of Premium Payments), the Municipality will release this Buy-Back Agreement within a reasonable period following receipt of a written request from the Purchaser, provided the Purchaser has complied with the Agreement of Purchase and Sale, this Buy-Back Agreement, the approved final Site Development Proposal, and the Site Development and Building Standards, to the satisfaction of HRM Corporate Real Estate. The Purchaser is responsible for all expenses of registering the release of this Buy-Back Agreement at the Halifax County Land Registration Office.
12. The Municipality shall not refund the Security for the Site Development and Landscaping of the Property to the Purchaser unless the entire Development, including the Building and the full site development and landscaping of the Property have been entirely completed in accordance with the approved final Site Development Proposal and the Site Development and Building Standards to the satisfaction of the HRM Corporate Real Estate within the time limits (or extended time limits pursuant to the payment of the Premium Payments) for Completion of the Development.

E. Closing of Buy-Back Transaction

13. If, however, the Purchaser is in default and the Municipality elects to buy-back the Property, the Purchaser shall reconvey the Property to the Municipality, and the repurchase price for the Property payable by the Municipality shall be ninety percent (90%) of the original Purchase Price paid by the Purchaser (subject to adjustments for interest, municipal taxes, and other matters normally adjusted for in purchases and sale of commercial 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 solely by the Municipality.
14. The Purchaser shall deliver up clean and vacant possession of the Property and shall convey the Property to the Municipality by Warranty Deed, free and clear of encumbrances, and drawn at the expense of the Purchaser, on the first Business Day that is thirty (30) calendar days after the date of written notice from the Municipality or on such other date as the Municipality, in its sole discretion, may direct.

F. Future Redevelopment

15. If at any time the Purchaser or its successors in title wishes to subdivide or consolidate the Property or to construct any additions, expansions, renovations, or to construct additional buildings on the Property, or to reconstruct or alter the Development (“**Redevelopment**”), the Purchaser or its successors-in-title as the case may be, must first submit to HRM Corporate Real Estate for its approval, preliminary conceptual design plans for such Redevelopment in conformity with the Site Development and Building Standards for the Park, which may be amended from time to time, in addition to obtaining the requisite approvals and permits from HRM Planning & Development. The foregoing obligations shall survive the release of this Buy-Back Agreement and shall continue in full force and effect and shall run with the Property as a burden thereon.
16. Nothing set out in this Buy-Back Agreement shall preclude the Purchaser from proceeding with a larger development or with an alternative use, provided that such larger development or alternative use complies with the Site Development and Building Standards and has been approved by HRM Corporate Real Estate at its sole discretion, and provided the Purchaser complies with the Municipality’s by-laws, policies, regulations and permitting processes administered by the HRM Planning & Development.

G. Warranties and Representations of the Purchaser

17. The Purchaser hereby warrants and represents to the Municipality that:
 - a) the Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and is registered to carry on business in Nova Scotia;
 - b) the Purchaser has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder; and
 - c) the Purchaser has or will have obtained all requisite corporate consents and approvals to perform its obligations under this Agreement.
18. Both parties to this Buy-Back Agreement understand and agree that the warranties, representations, terms, conditions and covenants of this Buy-Back Agreement shall survive the closing of the transaction contemplated by the Agreement of Purchase and Sale and shall survive the release of this Buy-Back Agreement from the parcel register for the Property and shall be binding upon the Purchaser and its successors-in-title to the Property.

H. General

19. 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 and “Business Day” refers to any weekday other than Saturday and Sunday, and civic and statutory holidays in Nova Scotia.

20. This Buy-Back Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.
21. 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.
22. 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.
23. 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.
24. In case any one or more of the provisions contained in this Buy-Back Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Buy-Back Agreement, but this Buy-Back Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Buy-Back Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.
25. Paragraph headings are for convenience of reference only and shall not be used to construe this Buy-Back Agreement.
26. This Buy-Back Agreement may be signed in counterparts, which together shall constitute one agreement. The Purchaser agrees to deliver to the Municipality three (3) sets of originally signed copies of this Buy-Back Agreement with the signed Agreement of Purchase and Sale. The Municipality agrees to provide one (1) originally signed copy of this Buy-Back Agreement to the Purchaser for registration at the Halifax County Land Registration Office by the Purchaser on the Closing Date.
27. Each of the parties have executed this Buy-Back Agreement by their respective duly authorized officers on the date stated below each party's signature. The date of this Buy-Back Agreement shall be the date this Buy-Back Agreement is signed by the Municipality.
28. This Buy-Back Agreement shall be binding upon the Purchaser and its administrators, successors, successors-in-title and assigns and shall enure to the benefit of the Municipality.

Balance of this page is deliberately left blank – signatures on following page

IN WITNESS WHEREOF each of the parties hereto have properly executed this Buy-Back Agreement at the hands of their respective duly authorized officers on the date written below each signature.

SIGNED and DELIVERED

In the presence of

Witness

) **PURCHASER:**
)
) Per: _____
)

Witness

) Name: _____
)
) Office Held: _____
)
) Date Signed: _____
)

Witness

) _____
) Name: _____
)
) Office Held: _____
)
) Date Signed: _____
)

HALIFAX REGIONAL MUNICIPALITY

Witness

)
)
)
) _____
) Mayor
)
) Date signed: _____
)
) _____
) Municipal Clerk
)
) Date signed: _____
)

**CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX**

On this ____ day of _____, 202__, before me, personally came and appeared _____ and _____, the subscribing witness(es) to the foregoing indenture, who being by me sworn, made oath, and said that the duly authorized officers of the Purchaser duly executed the within and foregoing indenture on its behalf in his/her presence.

A Commissioner/Barrister of the Supreme Court of Nova Scotia

**CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX**

I, _____ of _____, in the County of _____ and Province of _____ make oath and say as follows that:

1. I am the President of the Purchaser (the “**Company**”) and as such I have personal knowledge of the matters herein deposed to except where stated to be based on my information and belief, in which case I believe it to be true.
2. 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. I have executed the annexed instrument for and on behalf of the Company and thereby bind the Company;
4. The Company is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
5. The lands described in the annexed instrument are not and will not be 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. 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 _____, this ___ day
of ___ day of _____, 20__
before me:

A Commissioner or Barrister of the
Supreme Court of Nova Scotia/Notary
Public in and for the Province of _____



**CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX**

On this _____ day of _____, 20__, before me, the subscriber, personally came and appeared _____ and _____, the subscribing witness(es) to the foregoing indenture who being by me sworn, made oath, and said that the Mayor and 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

SCHEDULE "A"
PLAN OF SURVEY