

buy-back agreement

Schedule “D” to the Agreement of Purchase and Sale

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

For Lot [Lot #]
[Property Address]
[Business Park]
Halifax Regional Municipality, Nova Scotia

Date:



Halifax Regional Municipality
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This **BUY-BACK AGREEMENT** dated the ____ day of _____, A.D. 2004.

BETWEEN:

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

- and -

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

WHEREAS by an **Agreement of Purchase and Sale** dated the ____ day of _____, A.D. 2004 the Municipality agreed to sell and the Purchaser agreed to purchase a _____ acre (_____ square feet) Property identified as Lot [Lot #] in the **[Business Park]** which is within Halifax Regional Municipality, Province of Nova Scotia;

AND WHEREAS the above-mentioned **Agreement of Purchase and Sale** contains, inter alia, a **Buy-Back Agreement** in Clause 23 of the said **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. It is agreed between the Municipality and the Purchaser that this **Buy-Back Agreement** will constitute a first charge upon the Property which may be registered as presently constituted or, alternatively, at the sole election of the Municipality, a Notice of Agreement will be registered at the Registry of Deeds against the title to the Property.

B. Construction of Minimum Completed Building Area

2. It is agreed by the Purchaser that the Purchaser's Development of the Property referred to in the **Agreement of Purchase and Sale** shall be the construction by the Purchaser of a facility having a Minimum Completed Building Area of no less than _____ square feet. The Minimum Completed Building Area shall be calculated according to the provisions of Clause 14 of the Park's **Site Development and Building Standards**.
3. It is further agreed by the Purchaser that the Purchaser's Development of the Property will be as specified in the Agreement of Purchase and Sale, and more particularly in the Site Development Proposal which forms part of the Agreement of Purchase and Sale. Any changes to the proposed development outside of the Agreement of Purchase and Sale must first be approved by the Municipality acting reasonably.
4. It is agreed by the Purchaser that construction of the Minimum Completed Building Area on the Property shall be commenced for the entire Development not later than twelve (12) months after the date of Closing and that construction of the entire Development, including landscaping, paving and curbing, and fencing as required, shall be completed not later than twenty-four (24) months from the date of Closing. For purposes of this Clause, "commencement of construction" shall mean the pouring of the footings and foundations for the Development.
5. If the Minimum Completed Building Area, as provided for in Clause 2 of this **Buy-Back Agreement**, is at least ten (10) percent of the area of the Property, as defined in the **Agreement of Purchase and Sale**, the Purchaser shall be entitled to request a release of the **Buy-Back Agreement** once the Purchaser has substantially commenced construction of the Development on the Property to the roof-tight construction stage as provided for in the **Agreement of Purchase and Sale**.

C. Repurchase of Property

6. Within twenty-four (24) months of the Closing, if the Purchaser has not complied with the provisions of Clauses 2, 3, and 4 of this **Buy-Back Agreement**, the Municipality may repurchase the Property.

D. Repurchase Price of Property

7. In the event that the Municipality elects to buy back the Property in accordance with the terms of the **Agreement of Purchase and Sale** for the Purchaser's failure to comply with the terms of the **Agreement of Purchase and Sale** or the terms of this **Buy-Back Agreement**, the repurchase price for the Property or any portion thereof shall be ninety percent (90%) of the original Purchase Price less the cost of reinstating the Property to its condition at the date of Closing of the Property if the Municipality at its sole discretion decides not to accept the Property in its condition on the date that the Municipality decides to exercise its rights to repurchase the Property under the terms of this **Buy-Back Agreement**. The cost of reinstatement as referred to above shall be determined by the Municipality.

E. Premium Payment as an Alternative to Buy-Back

8. As an alternative to the provisions of Clause 4, the Purchaser may preclude the Municipality from repurchasing the Property for a period of forty-eight (48) months from Closing if, commencing two (2) years after the Closing date and on each subsequent anniversary of the Closing, the Purchaser pays to the Municipality an amount equal to the total real property taxes and the business occupancy taxes that would otherwise have been paid to the Municipality had the Purchaser constructed the Minimum Completed Building Area for the Development on the Property as provided for in the **Agreement of Purchase and Sale**. Forty-eight (48) months from Closing, the Municipality may at its sole discretion execute its rights under this Buy-Back Agreement.

The amount of the annual payment to be made by the Purchaser to the Municipality pursuant to this clause shall be conclusively determined by the Municipality calculating the required Minimum Completed Building Area for the Development as of the anniversary date of the Closing, times a deemed real property assessment per square foot (currently forty \$40 per square foot, subject to change without notice) as determined by the Municipality based on completed development, and a business occupancy assessment at 50% of the real property tax assessment. The prevailing commercial real property tax rates and business occupancy tax rates of the Municipality shall be applied to these assessments to determine the amount payable. The payment shall be made to the Municipality within thirty (30) days of the anniversary date.

9. The Municipality's rights to repurchase the Property according to the **Buy-Back Agreement** shall continue in force until the Purchaser has satisfied the Minimum Completed Building Area requirement.
10. Both parties to this Agreement understand and agree that the terms, conditions and covenants of this Agreement shall survive the Closing of the Property.

IN WITNESS WHEREOF the Municipality and the Purchaser hereto have executed this Agreement on the _____ day of _____, 2004.

SIGNED, SEALED and DELIVERED

_____)	[Purchaser's Name]
)	
)	
)	
)	
_____)	_____
Witness)	
)	
)	
)	
_____)	_____
Witness)	
)	
)	
)	HALIFAX REGIONAL MUNICIPALITY
)	
)	
)	
_____)	_____
Witness)	Mayor
)	
)	
_____)	_____
Witness)	Municipal Clerk

CANADA, NOVA SCOTIA, HALIFAX REGIONAL MUNICIPALITY

On this _____ day of _____, 2004, before me, this subscriber, personally came and appeared _____, who, having been by me duly sworn, made oath and said that **HALIFAX REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed on its behalf and its corporate seal to be thereunto affixed in her presence.

A Commissioner of the Supreme Court of Nova Scotia