



CAPE BRETON
REGIONAL MUNICIPALITY

Buy Back and Right of First Refusal Agreement

[Schedule C of the Cape Breton Regional Municipality (CBRM) Purchase and Sale Agreement]

Property: _____

Purchaser: _____

Year: _____ / _____ / _____
(month) (day) (year)

This **BUY-BACK AND RIGHT OF FIRST REFUSAL AGREEMENT** dated the [redacted] day of [redacted] [month], 20 **XX**

BETWEEN:

CAPE BRETON REGIONAL MUNICIPALITY, a municipal body corporate (hereinafter called the “**Municipality**”)

OF THE FIRST PART

- and -

[redacted] **[Purchaser’s Name]** having a registered office at (Insert City), in the County of (Insert County), Province of (Insert Province). (hereinafter called the “**Purchaser**”)

OF THE SECOND PART

WHEREAS by an Agreement of Purchase and Sale dated [redacted], 20__ (the “Agreement of Purchase and Sale”), the Municipality agreed to sell and the Purchaser agreed to purchase the property described in Schedule A hereto (the “Property”);

AND WHEREAS the Agreement of Purchase and Sale refers to a buy back and right of first refusal agreement, intending to be the within agreement;

WITNESSETH THAT in consideration of the mutual covenants contained herein and the consideration of the sum of One Dollar (\$1.00) paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the Municipality and the Purchaser agree as follows:

A. Definitions

In this agreement the following words shall have the following meanings:

Agreement means this Buy-Back and Right of First Refusal Agreement.

Agreement of Purchase and Sale means the Agreement of Purchase and Sale between the Purchaser and the Municipality dated [redacted], 20__.

Closing means the closing date as set out in the Agreement of Purchase and Sale or such other closing date for the sale of the Property as agreed to by the Municipality in writing. With respect to a future owner of the Property, “Closing” means the closing date as set out in the Agreement of



Purchase and Sale to which that future owner is a party or such other closing date for the sale of the Property as agreed to by that future owner in writing.

Commencement of Construction means the pouring of the footings and foundations for the Development.

Construction Value means of the Development.

Development means the buildings and other infrastructure the Purchaser intends to build on the Property as set out in an Application to Purchase dated _____, 20__ or such other development approved in writing by the Municipality.

Fee means the fee referred to in Clause 9.

Property means the property described in Schedule A hereto.

Purchaser means the Purchaser described on the cover page of this agreement, its heirs, executors, administrators, successors and assigns, including successors in title to the Property.

B. Registration of Agreement

1. This Agreement shall constitute a first charge on 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.

C. Minimum Value of Construction

2. Upon completion, the construction value of development on this property (not including the value of the land) will be at least \$150,000/acre based on the number of acres purchased.

For example, the purchase of 3 acres in the Northside Business Park will require a total construction value of \$450,000.

3. The Development shall be in accordance with the provisions of the Land Use By-Laws of the Municipality. Any changes to the proposed Development shall be approved in writing by the Municipality.

D. Commencement and Completion of Construction

4. Commencement of Construction shall occur no later than twelve (12) months from Closing.

5. Construction of the Development, including landscaping, paving and curbing, and fencing as required, shall be completed no later than twenty-four (24) months from Closing.



E. Municipality's Right to Buy-Back the Property

6. If, no earlier than twenty-four (24) months from Closing, the Purchaser has not complied with the provisions of Clauses 2, 3, 4 or 5 of the Agreement, the Municipality may buy-back the Property.

7. If the Municipality elects to buy-back the Property, the purchase price shall be the same price paid to the Municipality by the first purchaser that purchased the Property from the Municipality, less

- a) the cost of reinstating the Property to its condition at Closing, if the Municipality, in its sole discretion, decides not to accept the Property in its condition on the date that the Municipality decides to exercise its right to buy-back the Property,
- b) the Municipality's legal fees incurred to buy-back the Property, and
- c) the Municipality's administration costs to buy-back the Property.

8. If the Development is substantially complete to the roof-tight construction stage as confirmed by a Municipality building inspector the Purchaser shall be entitled to request a release of this Agreement from the Municipality and the Municipality shall provide same to the Purchaser and the Purchaser shall be responsible for its registration.

F. Fee Payment as an Alternative to Buy-Back

9. If, within twenty-four (24) months of Closing the Purchaser has not complied with the provisions of Clauses 2, 3, 4 or 5 of this Agreement, the Municipality may, instead of buying back the Property pursuant to Clause 6, and in its sole discretion, permit the Purchaser to retain ownership of the Property upon paying a fee to the Municipality (the "Fee").

10. The Fee shall be an amount equal to the total annual commercial real property taxes levied on a commercial property valued at the sum of the sale price of the property and the agreed upon minimum Value of Construction, less any annual property tax levied on the lot. The Purchaser shall pay the Fee retroactively from the date twenty-four (24) months after Closing to the date that the Municipality elects to impose the Fee. The Purchaser shall continue to pay the Fee every twelve (12) months thereafter until either (i) the provisions of Clause 5 have been complied with and construction of the Development is complete, or (ii) the Municipality elects to buy-back the Property pursuant to Clause 6.

11. If the Municipality elects to buy-back the property before a subsequent twelve (12) month period has expired, the Purchaser shall pay the Fee on a pro-rated basis based on the date the Municipality elects to exercise its right to buy-back the Property pursuant to Clause 6.

12. The Fee will be determined based on the prevailing commercial real property tax rate for the Municipality at the time that the Municipality elects to impose the Fee. Thereafter, the Fee shall be based on the prevailing commercial real property tax rate of the Municipality at the time the Municipality issues its invoice for the Fee.



13. The Fee shall be in addition to any real property taxes levied on the Property.

14. As an example of how the Fee is determined, if the Purchaser buys two (2) acres in the Northside Business Park, thirty (30) months after Closing Commencement of Construction has not occurred, and the Municipality elects to permit the Purchaser to retain ownership of the Property by paying the Fee, the Fee to be paid will be equal to the commercial real property taxes levied on a commercial property valued at \$315,000 (\$15,000 value of the land, plus \$300,000 minimum construction value) for six (6) months, based on the commercial real property tax rates applicable at that time, less any annual property tax levied on the lot. The Municipality will invoice the Purchaser every twelve (12) months thereafter at the prevailing tax rates until either (i) Clause 5 has been complied with and construction of the Development is complete, or (ii) the Municipality elects to buy-back the property pursuant to Clause 6. If the Municipality elects to buy-back the property before a subsequent twelve (12) month period has expired, the Purchaser shall pay the Fee on a pro-rated basis based on the date the Municipality elects to exercise its right to purchase the Property pursuant to Clause 6.

15. The Municipality may, in its sole discretion, elect to buy-back the Property, pursuant to Clause 6, at any time after it has elected to impose the Fee, and the Purchaser shall be obligated to pay the Fee pro-rated to the date the Municipality elects to buy-back the Property.

16. The Purchaser shall be obligated to pay the Fee to the Municipality within thirty (30) calendar days of receiving an invoice from the Municipality for the Fee.

G. Municipality's Right of First Refusal

17. If the Purchaser decides to sell all or a portion of the Property prior to the Commencement of Construction and receives a *bona fide* offer from a third party purchaser that the Purchaser is willing to accept, the Municipality shall have a right of first refusal to purchase same as follows:

- a) The Purchaser shall provide the Municipality with notice of the offer in writing and the Municipality shall have fourteen (14) business days from receipt of the notice to exercise its right of first refusal and agree to purchase the lands for the same price and on the same terms as set out in the offer.
- b) If the Municipality does not notify the Purchaser in writing that it has decided to exercise its right of first refusal within fourteen (14) business days then the Municipality shall be deemed to have not exercised its right of first refusal and the Purchaser may sell the lands in accordance with the offer.
- c) This right of first refusal shall be terminated and be of no force or effect from and after the date that construction of the Development is complete, including landscaping, paving and curbing, and fencing as required.



H. General

18. The terms, conditions and covenants of this Agreement shall survive Closing.

19. This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, including successors in title, and shall run with the land which is the subject of this Agreement and more particularly described in Schedule A hereto, until such time as it is discharged by the Municipality.

SIGNATURE PAGE TO FOLLOW



IN WITNESS WHEREOF the Municipality and the Purchaser hereto have executed this Agreement on the _____ day of _____, 20__.

SIGNED, SEALED and DELIVERED

[Name of Purchaser]

Witness Signature

) _____
) Signature

Witness Printed Name

) _____
) Name and Position

Witness Signature

) _____
) Signature

Witness Printed Name

) _____
) Name and Position

Cape Breton Regional Municipality

Witness Signature

) _____
) Per: _____
) Mayor Amanda M. McDougall

Witness Printed Name

) _____
) Per: _____
) Deborah Campbell Ryan - Clerk
)

NOTARY PAGE TO FOLLOW



CANADA, NOVA SCOTIA, COUNTY OF CAPE BRETON

On this ____ day of _____, 20__, before me, the subscriber(s) personally came and appeared _____
subscribing witness(es) to the foregoing indenture ,who being by me sworn, made oath, and said
that the Cape Breton Regional Municipality (One) of the parties thereto caused the same to be
executed in its name and on its behalf and its corporate seal to be thereunto affixed in his/her
presence.

A Commissioner of the Supreme Court of
Nova Scotia

_____, _____, **COUNTY OF** _____
COUNTRY **PROVINCE**

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 _____, holding the position of _____
and _____, holding the position of _____,
signed the same and affixed the seal of the Company thereto in his/her presence.

A Commissioner of the Supreme Court of
Nova Scotia

