

AGREEMENT OF PURCHASE AND SALE

This Agreement made in duplicate, this _____ day of December, 2021.

BETWEEN:

THE CITY OF FREDERICTON, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, and amendments thereto, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, hereinafter called the “Vendor”;

-AND-

SWIFTY’S 15 MINUTE OIL CHANGE LTD., a body corporate having its registered office at 11 Avonlea Court, Fredericton, New Brunswick, E3C 1N8, hereinafter called the “Purchaser”

WHEREAS the Vendor is the owner of the parcel of land located at 140 Two Nations Crossing, in the City of Fredericton, County of York and Province of New Brunswick, being more specifically identified as SNB PID 75436881 (the “Property”);

AND WHEREAS the Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendor the Property, which Property is more particularly outlined and identified on the sketch annexed hereto as Schedule “A”;

AND WHEREAS the Parties acknowledge that this Agreement shall be subject to the final approval of Council for the City of Fredericton.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of \$1.00 (One Dollar) and other valuable consideration now paid by the Purchaser to the Vendor, the receipt of which sum is hereby acknowledged, the Vendor hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase from the Vendor the Property, subject to the terms and conditions herein contained.

1. THE PROPERTY

1.1 The Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor all of the Vendor’s right, title and interest in and to the Property.

2. PURCHASE PRICE AND METHOD OF PAYMENT

2.1 The purchase price of the Property shall be the sum of **ONE HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS (\$175,000.00)** of lawful money of Canada, plus applicable HST, (the “Purchase Price”).

2.2 The Purchase Price shall be payable by certified cheque, in trust, to the Vendor or by such other means of payment as the Vendor may otherwise direct, on the Closing Date, subject to the adjustments stipulated within this Agreement.

3. DEPOSIT

Not applicable

4. ADJUSTMENTS

4.1 Adjustments shall be made on the Closing Date for all items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Property, including, without limitation and to the extent applicable to this transaction, realty taxes, local improvement rates, insurance, rentals, mortgage interest, municipal liens, water rates and fuel.

5. CLOSING

5.1 Subject to any other provisions contained herein, this Agreement shall be completed on March 29, 2022, or such earlier or later date as the Parties may mutually agree to in writing (the "Closing Date").

5.2 This Agreement shall be completed at a time as the Parties may mutually agree upon on the Closing Date in the office of the Solicitors for the Vendor, or other agent designated by the Vendor, or at such other place or time as the Parties may mutually agree to in writing. Delivery of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Closing Date.

6. PROPERTY

6.1 The Purchaser shall have sixty (60) days from the date of execution of the agreement, which shall be referred to as the "Due Diligence Period", to satisfy itself that:

- (a) the title to the Property is good and free from restrictions, mortgages, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save and except for: (i) any registered restrictions or covenants that run with the Property, provided that such have been complied with, (ii) any registered municipal agreements and agreements with publicly regulated utilities, provided that such have been complied with, (iii) any easements and rights-of-way, provided that such have been complied with, (iv) any qualifications, reservations, provisos and limitations contained in or imposed by any applicable statute and/or any authority having jurisdiction over the Property provided that such have been complied with, (v) any discrepancies in title or possession which would be disclosed by an up-to-date survey;
- (b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the Property; and
- (c) the Purchaser may enter upon the Property for the purpose of conducting environmental testing and investigations to determine that the soil and environmental conditions of the Property

(including, without limiting the generality of the foregoing, all geotechnical and environmental concerns with respect to the Property) are satisfactory for the intended use by the Purchaser, and for that purpose, the Purchaser shall, at its own expense, have the right to enter upon the Property at any time or times forthwith following the execution of this Agreement following notice in writing to the Vendor for the purpose of making such soil and other tests and inspections as are required by the Purchaser.

6.2 If, within the Due Diligence Period, the Purchaser notifies the Vendor or the Vendors' Solicitors of any valid objection to title or to any outstanding environmental conditions, order, deficiency notice or directive or to the fact that the present use of the Property may not be lawfully continued and which the Vendors are unable or, in their discretion, determine not to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of any such matter, be at an end and the Vendor shall not be liable for any costs or damages or other claims. Save as to any valid objection so made within the Due Diligence Period, and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted the Vendors' title to the Property.

6.3 Subject to Sections 6.1 and 6.2, the Vendor covenants and agrees to discharge any registered liens, mortgages or charges affecting the Property at their own expense on or before the Closing Date.

6.4 The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except as are in the control or possession of the Vendor. The Vendor agrees that the Vendor will deliver any sketch or survey of the Property in the Vendor's control or possession to the Purchaser as soon as practicable and prior to the last day allowed for examining title to the Property. The Purchaser shall be solely liable for the cost of any up-to-date survey, surveyor's description or reference plan of the Property that may be required in connection with the completion of the transaction contemplated by this Agreement.

6.5 The Vendor, upon the request of the Purchaser, shall forthwith deliver letters in a form satisfactory to the Purchaser addressed to such governmental authorities as may be reasonably requested by the Purchaser or its solicitors authorizing the release of any information as to compliance matters which such governmental authorities may have pertaining to the Property; provided, however, that nothing herein contained shall be deemed to authorize or permit the Purchaser to request any governmental or municipal inspections of the Property. If this Agreement is not completed the Purchaser shall keep any such information strictly confidential and shall not use it for any purpose whatsoever.

6.6 There is no condition, representation or warranty of any kind, express or implied, that the condition of the Property shall be appropriate for any particular use, unless expressly set out herein, or that the present use by the Vendor or the future intended use by the Purchaser is or will be lawful or permitted, or that any sketch or survey delivered by the Vendor to the Purchaser is complete or accurate. Without limiting the generality of the foregoing, this Agreement shall not be affected by any change in the zoning or use of the Property prior to completion. The Vendor shall not apply for any change in zoning after the Acceptance Date and prior to completion or termination of this transaction, without the Purchaser's prior written approval or consent.

7. ACCEPTANCE, CONDITIONS AND RESTRICTIONS

7.1 The Parties shall indicate the date on which each has executed this Agreement in the space provided immediately above the execution line and upon such execution of the last Party signatory being communicated to the other Party or its solicitors pursuant to Section 10, this Agreement shall become a binding agreement for the purchase and sale of the Property.

7.2 The Parties acknowledge and agree that the completion of the sale and purchase of the Property as contemplated by this Agreement is subject to the following conditions:

- (a) The Vendor and the Purchaser acknowledge that the Property is being sold on an “as is” basis;
- (b) The acquisition of the Property by the Purchaser shall be conditional on the completion of the sale of its existing facility on Union Street;
- (c) The Purchaser shall be responsible for submitting any application to the Planning Advisory Committee regarding any variance(s), rezoning(s), or any such other planning approvals that may be required for its intended use of the Property; accordingly, the Vendor, as property owner, hereby grants consent and authorizes the Purchaser, prior to the Closing Date, to make any application to the Planning Advisory Committee that may be required;
- (d) All property agreements and transactions are subject to the Planning Advisory Committee’s approval and conditions/recommendation, if any, and City Council’s authorization and approval.

8. OBLIGATIONS ON CLOSING – THE VENDOR

8.1 The Vendor shall execute and deliver to the Purchaser on or before the Closing Date, the following:

- (a) Transfer - such transfer in registerable form as may be required to transfer to the Purchaser all of the Vendors’ right, title and interest in the Property;
- (b) Statement of Adjustments - a statement of adjustments;
- (c) Vendor’s Certificate - a certificate of the Vendor to indicate whether or not the Vendor is registered under the Harmonized Sales Tax provisions of the *Excise Tax Act* and the Vendor’s registration number shall be provided therein;
- (d) Corporate Resolution – if required, a certified copy of the appropriate corporate resolution of the Vendor approving and authorizing the disposal of the Property, copies of which shall be attached to the Statement of Adjustments; and
- (e) Other – any other documents specifically referred to in this Agreement relative to the completion of this Agreement, together with any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor and the Vendor’s Solicitor, acting reasonably, or by the Purchaser and the Purchaser’s Solicitors, acting reasonably.

8.2 All of the documents referred to in Section 8.1 shall be prepared by the Vendor’s Solicitor at the Vendor’s expense, unless otherwise specifically stated in this Agreement.

9. OBLIGATIONS ON CLOSING – THE PURCHASER

9.1 The Purchaser shall execute and deliver to the Vendor on the Closing Date the following:

- (a) Purchase Price – pay the Purchase Price; subject to such terms, conditions and practice customary to such payment, as the Parties or their solicitors may further agree in writing, and such amount to be payable to the Vendor or Vendor’s Solicitor, or as the Vendor may otherwise direct, subject to the adjustments set forth in Section 4.1 and consistent with the Statement of Adjustments provided for in Section 8.1(b);
- (b) Corporate Resolution - a certified copy of the appropriate corporate resolution of the Purchaser approving and authorizing the acquisition of the Property, copies of which shall be attached to the Statement of Adjustments, if applicable; and
- (c) Other - any other documents specifically referred to in this Agreement relative to the completion of this Agreement, together with any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor and the Vendor’s Solicitor, acting reasonably, or by the Purchaser and the Purchaser’s Solicitors, acting reasonably.

9.2 All of the documents referred to in Section 9.1 shall be prepared by the Purchaser’s Solicitor at the Purchaser’s expense, unless otherwise specifically stated in this Agreement.

10. RISK

10.1 Until the Closing Date and completion of the sale of the Property, the Property shall be and remain at the risk of the Vendor.

11. NOTICE

11.1 Any notice, approval or other communication required or permitted to be given hereunder ("Notice") shall be in writing and shall be sufficiently given if personally delivered or if sent by prepaid registered mail or if transmitted by facsimile:

Notice to Vendor:
The City of Fredericton
397 Queen Street
Fredericton, NB E3B 1B5
Attn: Manager of Real Estate

Notice to Purchaser:
Swiftly’s 15 Minute Oil Change Ltd.
11 Avonlea Court
Fredericton, NB E3C 1N8
Attn: Anna Zalot

with a copy to the Solicitor of each party.

Vendor’s Solicitor:
Davis Law
3707 Route 102 Highway
Island View, NB E3E 1E9
Attn: James A. Davis
Tel: 506-453-1998
E-mail: jim@davislaw.ca

Purchaser’s Solicitor:
Cox & Palmer
77 Westmorland Street, Suite 300
Fredericton, NB E3B 4Y9
Attn: Renna Eliakis
Tel: 506-440-0142
E-mail: reliakis@coxandpalmer.com

11.2 Any Notice so given shall be deemed conclusively to have been given and received if personally delivered, if sent by facsimile or if sent by electronic mail on the day such Notice was delivered if delivered on a Business Day and deemed to have been received on the next Business Day if such delivery was made on a non-Business Day. Any Notice sent by prepaid registered mail shall be deemed to have been delivered on the third (3rd) Business Day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a Business Day. No such Notice shall be mailed during any actual or apprehended disruption of postal services.

11.3 Either Party may from time to time change its address for service by written notice to the other Party by providing notice as stipulated under this section.

12. MISCELLANEOUS

12.1 This Agreement shall constitute the entire agreement between the Parties and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise (including statutory), of any kind whatsoever except as set out in writing in this Agreement and all prior negotiations, proposals and writings pertaining to this Agreement or the subject matter hereof are superseded hereby.

12.2 This Agreement shall not be modified or amended except with the written consent of the Vendor and the Purchaser. In addition, no modification or amendment to this Agreement binds the Vendor or the Purchaser unless it is in writing and has been duly executed by both Parties.

12.3 This Agreement and everything relating hereto shall be construed and enforced in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

12.4 Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable without invalidating, limiting or impairing the remaining provisions of this Agreement.

12.5 Time shall in all respects be of the essence hereof, provided that the time for doing or completing of any matter provided for herein may be extended or abridged in accordance with the terms of this Agreement or by an agreement in writing signed by the Vendor and the Purchaser or by their respective Solicitors who are hereby expressly appointed in this regard.

12.6 Neither the Vendor nor the Purchaser shall assign any of the obligations and rights under this Agreement without the prior written consent of the other Party.

12.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors and assigns.

12.8 This Agreement shall be read with all changes of gender or number required by the context.

12.9 The Parties acknowledge that they have read this Agreement in its entirety. The Parties further acknowledge that they understand the terms and conditions herein contained and acknowledge that they have had the opportunity to obtain independent legal advice prior to signing this Agreement.

12.10 The Vendor and the Purchaser shall from time to time, and at all times, do or cause to be done, such further acts and execute and deliver, or cause to be executed and delivered, such further documents as shall be required in order for the Vendor and the Purchaser to fully comply with the requirements in respect to any HST imposed under any applicable legislation.

12.11 The Purchaser shall pay and be liable for all transfer taxes and other taxes applicable to or resulting from the transactions contemplated hereby, together with all filing, registration or recording charges or fees payable in connection with the filing or registration of any deeds, transfers of land or other documents executed and delivered hereunder, excluding any income tax payable by the Vendor.

12.12 The Vendor and the Purchaser shall be responsible for their own legal counsel and related services that may be required, in connection with this Agreement.

IN WITNESS WHEREOF the Vendor and Purchaser have caused this Agreement to be executed as of the dates herein below written.

In Witness Whereof this Agreement has been signed by the Vendor on December _____, 2021.

In Witness Whereof this Agreement has been signed by the Purchaser on _____, 2021.

THE CITY OF FREDERICTON

SWIFTY'S 15 MINUTE OIL CHANGE LTD.

Kate Rogers, Mayor

Anna Zalot, Director

(I have authority to bind the corporation)

Jennifer Lawson, City Clerk

Schedule "A"

Service New Brunswick

Service Nouveau-Brunswick



Scale/Échelle 1:1418

Date: 2021/11/17 16:12:59



PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, **JENNIFER LAWSON**, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I am the City Clerk of the City of Fredericton, one of the Parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. That the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. That the signature “Kate Rogers” subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature “Jennifer Lawson” subscribed thereto is my signature.
4. That the Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.
5. That The City of Fredericton is a municipal corporation and has no share capital.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
December, 2021.)

Donna Legacy)
A Commissioner of Oaths)

Jennifer Lawson