

Oxford – Single Family Residence
Sale and Development Agreement

THIS AGREEMENT made in triplicate this ____ day of ____, ____

BETWEEN:

THE CITY OF EDMONTON
(the “City”)

- and -

(the “Buyer”)

A. The City is the registered owner of that certain parcel(s) of land, together with all improvements thereon, and being legally described as:

PLAN ____
BLOCK ____
LOT ____

EXCEPTING THEREOUT ALL MINES AND MINERALS

All as legally described on certificate of title(s) # ____ (the “Sale Land”).

B. The City has agreed **to sell** to the Buyer and the Buyer has agreed **to purchase** from the City, the Sale Land in accordance with the terms and conditions stated in this Agreement.

C. The City desires to restrict the development of the Sale Land so as to ensure the development of the Sale Land in accordance with the Sustainability and Architectural Design Guidelines, being attached as Schedule “A” (the “**Design Guidelines**”);

D. The Buyer has agreed with the City to construct **a single family residential development** (the “**Development**”) on the Sale Land in accordance with the Design Guidelines and in all respects to abide by and to be bound by the Design Guidelines.

IN CONSIDERATION OF the sale of the Sale Land and the payment of the Sale Price, the City and the Buyer **agree as follows**:

1. Sale Price

1.1 The Buyer shall **purchase** the Sale Land from the City and the City shall **sell** the Sale Land to the Buyer for the sum of ____ (\$____) DOLLARS (plus G.S.T. if applicable) (the “**Sale**

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Price”) and upon the terms and conditions stated in this Agreement. **The Sale Price shall be paid in the following manner:**

- (a) \$_____, to be paid by a certified cheque to the City as a deposit upon the execution of this Agreement by the Buyer (the **“Deposit”**); and
- (b) \$_____, being the balance to be paid by certified cheque, bank draft or solicitor’s trust cheque on the Closing Date.

1.2 All sums of money which become due and owing by virtue of this Agreement shall be paid by the Buyer at the address for notice for the City as stated in Clause 15.1. All overdue payments of the Sale Price shall **be charged interest** at the rate of eighteen (18%) per cent per annum, compounded annually.

2. Conveyance of Sale Land

2.1 The **transfer of the title** to the Sale Land shall be completed on the _____ day of _____, _____ or such other date as the City and the Buyer may agree in writing (the **“Closing Date”**).

2.2 The City shall **on the Closing Date** and on payment by the Buyer of the Sale Price, transfer the Sale Land to the Buyer or any other party as the Buyer may request in writing, subject only to the following registrations:

- (a) Utility Right of Way being registered as instrument number ;
- (b) The Zoning Regulations registered as instrument number 052 105 442;
- (c) The Caveat to be registered by the City to protect its right under that certain Buy-Back Option Agreement dated the same date as this Agreement and to be entered into between the City and the Buyer;

and such caveats, encumbrances, liens, charges or instruments as may have been made or caused to be made by the Buyer. All fees payable in connection with the registration of the transfer are to be paid by the Buyer.

2.3 **Notwithstanding any other provision contained in this Agreement**, it is expressly agreed to between the City and the Buyer, that the **City shall only be obligated to transfer the title to the Sale Land to the Buyer** in the manner stated in section 2 hereof, at such time as the Buyer shall:

- (a) have applied for and obtained development approval and a building permit required for the purposes of the Development in accordance with the Plans and the Design Guidelines and shall have provided to the City written evidence, satisfactory solely to the City, of the development approval and building permit as herein required;
- (b) deliver to the City a duly executed copy of the Buyer’s Acknowledgement in the form attached hereto as Schedule “B” and forming part of this Agreement;

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- (c) where there is any transfer by the City directly to a subsequent buyer where the Buyer is an intervening transferee, the Buyer shall deliver a duly executed copy of the Subsequent Buyer's Acknowledgement described in section 9.2, in the form attached hereto as Schedule "C" and forming part of this Agreement;

3. Possession

3.1 The City shall provide **possession** of the Sale Land to the Buyer on the ____ day of ____, ____ or such other date as the City and the Buyer may agree in writing (the "**Possession Date**"). From and after the Possession Date, the Buyer shall be responsible for the **payment of all taxes**, rates, levies, charges, local improvement charges, assessments, utility charges and hook-up fees, with respect to the Sale Land. **All adjustments** for rent, security deposits or other profits or items commonly adjusted on a sale of real property with respect to the Sale Land shall be made as of the Possession Date. **The Buyer hereby expressly acknowledges that the Buyer is aware of the provisions of the Design Guidelines and agrees to be bound by all of the covenants and obligations therein as of and after the Possession Date, notwithstanding that the Possession Date may be prior to the Buyer taking title to the Sale Land.**

3.2 The Buyer shall on the Possession Date, carry out an inspection of the streets, sidewalks, boulevards and ancillary improvements that are located immediately adjacent to the Sale Land (the "**Streets**") and all matters requiring repair to the Streets shall be duly noted in writing and provided to the City at such time of inspection. In the event that the Streets shall have been damaged during the course of the construction of the Development, the City may, but without obligation, repair all such damage as caused to the Streets and all cost expended by the City may be deducted by the City from the Performance Fee.

3.3 The Buyer shall indemnify and save harmless the City from and against any and all claims, liabilities and damages which may arise from any act or omission of the Buyer, its employees, agents or contractors as a result of the Buyer's possession of the Sale Land prior to the Closing Date. If the Soils Condition is not fulfilled on or before the Soils Condition Date, then the City may restore the Sale Land back to the state which it existed prior to the Buyer taking possession of the Sale Land with regard to, without limitation, the Buyer conducting soil tests, excavating the Sale Land or in any way commencing to construct the Development. Such restoration shall be completed to the City's satisfaction, and, notwithstanding anything else contained in this Agreement, the Buyer expressly agrees that the City may retain the costs of such restoration from the Deposit and the Performance Fees, prior to the City returning the Deposit and the Performance Fees to the Buyer pursuant to the provisions of Clause 6 of this Agreement.

4. Development

- 4.1 As additional consideration for the sale of the Sale Land by the City to the Buyer, the Buyer shall:
 - (a) prior to commencement of construction of the Development, obtain the written approval of the Manager of the Corporate Properties Branch of the Sustainable Development Department of the City or their designate (the "**Manager**") of the plans and specifications for the Development (the "**Plans**");

- (b) commence to construct the Development within six (6) months of the Possession Date;
- (c) substantially complete the construction of the Development within eighteen (18) months of the Possession Date;
- (d) construct the Development on the Sale Land in accordance with:
 - (i) this Agreement;
 - (ii) the Design Guidelines as described herein;
 - (iii) the Plans as approved by the Manager;
 - (iv) the Sustainable Certification as described in section 7 herein;
 - (v) the existing RF4 or RSL (as the case may be) zoning for the Sale Land; and
 - (vi) all applicable federal, provincial and municipal laws, regulations and codes, including, without limitation, the Alberta Building Code;
- (e) upon completion of the Development, obtain a final lot grading approval pursuant to the *Subsurface Drainage Bylaw Number 11501* for the Sale Land;
- (f) ensure that no writs of enforcement, Buyers' liens or other charges (save for the Buyer's construction financing, if required) (the "Charges") whatsoever are filed against the Sale Land prior to the Closing Date, and promptly discharge any Charges so registered.

4.2 Notwithstanding anything to the contrary in this Agreement, the Buyer shall not commence to construct the Development until the fulfilment of the Soils Condition.

4.3 The Buyer and the City acknowledge and agree that the Manager's approval of the Plans is strictly limited to an approval of the Buyer's adherence to the Design Guidelines, and such approval is not, and shall not be deemed or construed as, an approval of, without limitation, compliance with municipal bylaws, building code or other applicable laws, regulations, guidelines, codes or policies, nor suitability of the Development with soil or subsurface conditions of the Sale Land.

4.4 For the purposes of this Agreement, the term "**commence to construct**" shall mean the construction of all footings and foundations, and the term "**substantially complete**" shall mean the construction of all required interior and exterior finishing and yard landscaping, including the adjacent roadway boulevard, all in accordance with the Plans and Design Guidelines and all as certified by the City's consultant. The Buyer shall commence to construct on the Sale Land the Development in accordance with the Design Guidelines and the Plans within six (6) months of the Possession Date and shall substantially complete the construction of the Development within eighteen (18) months of the Possession Date. In the event that the date for the Buyer to substantially complete the Development falls within the period from November 1st to June 30th, then the date for the Buyer to substantially complete the Development shall be extended to the immediately following July 31st.

5. Performance Fees

5.1 For the better securing of the performance by the Buyer of the terms and conditions of this Agreement and as additional consideration for the sale of the Sale Land by the City, the Buyer shall

provide to the City, concurrently with the delivery to the City of this Agreement executed by the Buyer:

- (a) a cheque, cash payment or such other security as is acceptable to the City, for an amount of _____ (\$_____) Dollars (the “Design Guidelines Performance Fee”); and
- (b) a cheque, cash payment or such other security as is acceptable to the City, for an amount of _____ (\$_____) Dollars (the “Sustainable Certification Performance Fee”);

(collectively the Design Guidelines Performance Fee and the Sustainable Certification Performance Fee are referred to in this Agreement as the “Performance Fees”)

Design Guidelines Performance Fee

5.2 If the Buyer shall default in any of its obligations under the Design Guidelines or section 4 herein then the Design Guidelines Performance Fee shall be forfeited to the City and may be retained by the City in whole or in part not as a penalty but as liquidated damages.

5.3 If all or part of the Design Guidelines Performance Fee is forfeited by the Buyer, the City shall be under no obligation to expend any portion of the Design Guidelines Performance Fee for the purposes of the carrying out of the obligations of the Buyer relating to the Design Guidelines or pursuant to this Agreement, however, should the City do so, the Buyer shall promptly top up the Design Guidelines Performance Fee to the full amount required under this Agreement. Provided further, notwithstanding a forfeiture of the Design Guidelines Performance Fee by the Buyer, nothing herein shall preclude the City from exercising any other right, pursuing any other remedy or maintaining any action to which the City may otherwise be entitled either at law or in equity, with respect to the enforcement of the terms and conditions of this Agreement.

5.4 The Buyer acknowledges and agrees with the City that the Design Guidelines Performance Fee is in addition to and not in the place of any other performance fee, guarantee or security as may be required to be paid or placed by the Buyer pursuant to this Agreement, any development approval or building permit as may be required pursuant to the Municipal Government Act, R.S.A. 2000, c. M-26, as amended, or any other law in force in the Province of Alberta.

5.5 Provided the Buyer is not in default of its obligations contained herein and the Design Guidelines Performance Fee has not been forfeited to the City, upon the issuance of the final lot grading approval pursuant to the *Subsurface Drainage Bylaw Number 11501* for the Sale Land the Buyer may request in writing the return of the Design Guidelines Performance Fee. The Design Guidelines Performance Fee, less any earned interest, shall be returned to the Buyer upon the City’s consultant confirming that the Development has been constructed in accordance with the Design Guidelines and section 4 and the final lot grading approval for the Sale Land has been obtained.

Sustainable Certification Performance Fee

5.6 If the Buyer shall default in its obligations to obtain the Sustainable Certification pursuant to section 7 then the Sustainable Certification Performance Fee shall be forfeited to the City and may be retained by the City in whole or in part not as a penalty but as liquidated damages.

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5.7 If all or part of the Sustainable Certification Performance Fee is forfeited by the Buyer, the City shall be under no obligation to expend any portion of the Sustainable Certification Performance Fee for the purposes of the carrying out of the obligations of the Buyer relating to the Sustainable Certification. Provided further, notwithstanding a forfeiture of the Sustainable Certification Performance Fee by the Buyer, nothing herein shall preclude the City from exercising any other right, pursuing any other remedy or maintaining any action to which the City may otherwise be entitled either at law or in equity, with respect to the enforcement of the terms and conditions of this Agreement.

5.8 The Buyer acknowledges and agrees with the City that the Sustainable Certification Performance Fee is in addition to and not in the place of any other performance fee, guarantee or security as may be required to be paid or placed by the Buyer pursuant to this Agreement, any development approval or building permit as may be required pursuant to the Municipal Government Act, R.S.A. 2000, c. M-26, as amended, or any other law in force in the Province of Alberta.

5.9 Provided the Buyer is not in default of its obligations contained herein and the Sustainable Certification Performance Fee has not already been forfeited to the City, within thirty (30) days of receipt by the City of a copy of the certificate from BuiltGreen described in section 7.1(c) the Sustainable Certification Performance Fee, less any earned interest, shall be returned to the Buyer.

6. Conditions Precedent

6.1 Notwithstanding any term or condition in this Agreement, the sale by the City to the Buyer of the Sale Land is expressly subject to and conditional upon the Buyer conducting such independent soil and geotechnical tests as may be required to prove to the satisfaction of the Buyer that the Sale Land is in a state satisfactory for the Buyer's proposed development of the Sale Land (the "**Soils Condition**"). The Soils Condition is to be fulfilled on or before the ____ day of ____, ____, or such other date as the City and the Buyer may agree in writing (the "**Soils Condition Date**"). The Buyer shall provide copies of all soil and geotechnical tests conducted by the Buyer to the City, upon fulfillment of the Soils Condition.

6.2 If the Soils Condition is not fulfilled by the Soils Condition Date, then:

- (a) this Agreement shall be deemed to have been mutually terminated by the City and the Buyer;
- (b) the Deposit and the Performance Fees shall be returned to the Buyer, less any and all earned interest on the Deposit or the Performance Fees, which shall be to the benefit of the City and less any amounts of the Deposit or the Performance Fees needed by the City to restore the Sale Land;
- (c) upon return of the Deposit and the Performance Fees (or any portion thereof) to the Buyer, all rights and obligations of the City and the Buyer pursuant to this Agreement shall be at an end except as otherwise stated in this Agreement;

- (d) the Buyer shall promptly discharge any caveat, encumbrance, lien, charge or other instrument which the Buyer may have registered or caused to be registered against the title to the Sale Land; and
- (e) the Buyer shall not have any further obligation or liability to the City and the City shall have no further rights as against the Buyer, including any claim to damages, save for the provisions of sections 6.2(d) and 10.

6.3 If the Soils Condition is fulfilled by the Soils Condition Date but the Buyer fails to complete the purchase of the Sale Land in the manner and on the date as provided for in this Agreement, otherwise than as a result of the City's default, then:

- (a) the Deposit and the Performance Fees and all earned interest on the Deposit and the Performance Fees shall be immediately forfeited to the City as liquidated damages and not as a penalty;
- (b) the interest of the Buyer in the Sale Land as created by this Agreement shall terminate without any legal proceedings being taken or other act being performed by the City;
- (c) the Buyer shall promptly discharge any caveat, encumbrance, lien, charge or other instrument which the Buyer may have registered or caused to be registered against the title to the Sale Land; and
- (d) the Sale Land shall revert to and revert in the City and the City shall not have any further obligation or liability to the Buyer with respect to the Sale Land.

6.4 All costs incurred by the Buyer with respect to the conduct and fulfilment of the Soils Condition shall be solely at the Buyer's expense. The Soils Condition is for the mutual benefit of the Buyer and the City and therefore may not be waived by the Buyer or the City. The Buyer shall take all reasonably required steps to fulfil the Soils Condition prior to the Soils Condition Date. **If the Buyer does not take all such reasonable steps, the Buyer expressly agrees that the Buyer shall forfeit the Design Guidelines Performance Fee to the City as liquidated damages and not as a penalty.**

7. Sustainable Certification

7.1 Notwithstanding any term or condition in this Agreement, as additional consideration for the sale of the Sale Land by the City to the Buyer, the Buyer shall:

- (a) ensure that the Development is constructed in accordance with the specifications described by BuiltGreen Alberta for at least a Silver Level certification achieving a minimum EnerGuide rating of 78;
- (b) comply with all requirements of the BuiltGreen Alberta program including all applications and registrations as are required; and
- (c) obtain a certificate from BuiltGreen Alberta confirming the Development has been constructed in accordance with this section 7.

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(collectively the requirements of this section 7.1 are referred to in this Agreement as the “Sustainable Certification”)

7.2 The Buyer expressly acknowledges and agrees that the requirement that the Buyer participate in the BuiltGreen Alberta program as described herein is to the benefit of the Buyer, and that the City makes no warranty or representation as to content of the BuiltGreen Alberta program whatsoever; nor shall the City be deemed or construed hereunder as approving or endorsing either program to the Buyer. The Buyer shall be solely responsible for ensuring the suitability of such program to the Buyer’s development.

8. Warranties and Representations

8.1 Notwithstanding any term or condition in this Agreement, the Buyer shall purchase the Sale Land on the understanding and agreement that:

- (a) there are **no agreements, conditions, warranties or representations** relating to the Sale Land, other than as stated in this Agreement and in particular this section;
- (b) except as provided in this section, the City makes no warranty or representation with respect to:
 - (i) the quality, condition or sufficiency of the Sale Land for any **use or purpose**;
 - (ii) the adequacy of any and all **utility services** either to or on the Sale Land;
 - (iii) the Engineered Fill (as defined herein);
 - (iv) the absence or presence of **hazardous substances** in, on or under the Sale Land; or
 - (v) the compliance of the Sale Land with any municipal laws;
- (c) the Sale Land is being sold to the Buyer on a **strictly “as is, where is” basis** and the Buyer shall acquire the Sale Land at its own risk, with all faults and imperfections whatsoever, including without limitation:
 - (i) any encroaching improvements onto or from the Sale Land or onto or from adjacent lands;
 - (ii) the presence of any hazardous substances in, on or under the Sale Land; or
 - (iii) the soil and subsurface conditions of the Sale Land;
- (d) the Buyer shall have satisfied itself as to the condition of the Sale Land and the fitness for its intended use;
- (e) the Buyer:
 - (i) confirms to the City that the Buyer is aware that the Sale Land contains native soils placed under controlled compaction with engineering inspection and density testing (the “Engineered Fill”) and that the Buyer has not relied on any representations of the City with respect to the Engineered Fill or the soil and subsurface conditions of the Sale Land;

- (ii) warrants to the City that, if the Soils Condition is fulfilled by the Buyer, then the Buyer shall have satisfied itself through independent inspections and investigations of the Engineered Fill and the soil and subsurface conditions of the Sale Land and the Buyer fully accepts the Sale Land in this regard.

8.2 The term “**hazardous substances**” includes but is not limited to, biological materials and agents (whether hazardous, in fact, or not), petroleum products and by-products, any contaminants, pollutants, dangerous substances, hauled liquid wastes, toxic substances, industrial wastes, hazardous wastes, hazardous materials, hazardous chemicals, and hazardous substances as defined in any federal, provincial or municipal legislation.

9. Engineered Fill

9.1 As additional consideration for the City selling the Sale Land to the Buyer, the Buyer shall execute and deliver concurrently with executed copies of this Agreement, the written acknowledgement in the form attached hereto as Schedule “B” and forming part of this Agreement.

9.2 Upon the transfer of the Sale Land by the Buyer to a subsequent buyer (including any transfer by the City directly to a subsequent buyer where the Buyer is an intervening transferee), the Buyer shall deliver to the City a written acknowledgement in the form attached hereto as Schedule “C” and forming part of this Agreement, whereby the immediate buyer from the Buyer (the “Subsequent Buyer”) shall acknowledge to the City that the Subsequent Buyer is aware of the presence of Engineered Fill on the Sale Land. The Buyer hereby agrees to indemnify and save harmless the City from and against any and all actions, causes of actions, claims, liabilities, demands, or damages which may be brought against the City or which the City may sustain due to a Subsequent Buyer not executing such written acknowledgement to the City.

9.3 The Buyer shall not and has not relied on the City’s subdivision, development or building approval, regulatory or inspection processes as completed by any City employee, agent or contractor, including any engineer or inspector, to relieve the Buyer of its knowledge, actual or deemed, of all faults and imperfections whatsoever related to the Sale Land, including without limitation, the presence of the Engineered Fill and the soil and subsurface conditions of the Sale Land.

9.4 The Buyer hereby releases the City, its employees, agents, invitees, contractors and for those persons for whom the City is responsible in law, and its successors and assigns, from any and all liabilities, costs, damages, claims, suits, expenses or actions, including all legal costs and disbursements, whatsoever which against the City the Buyer ever had, now has, or which its heirs, executors, administrators, or assigns, or any of them, hereafter may have, whether in contract or in tort, arising out of or in consequence of:

- (a) the Engineered Fill;
- (b) the soil and subsurface conditions of the Sale Land; or
- (c) the City’s subdivision, development or building approval, regulatory or inspection processes as completed by any City employee, agent or contractor, including any

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engineer or inspector, with respect to the design, construction and installation of any Development constructed or placed on the Sale Land.

10. Right of Entry

10.1 Upon the date of execution of this Agreement by the City and the Buyer, the Buyer shall be granted a right of entry to the Sale Land (the "Right of Entry"), for the purposes of erection of permitted signs, carrying out surveys, environmental tests and studies, and soil tests, which will enable the Buyer to appraise the Sale Land for its proposed development. The Buyer shall indemnify and save harmless the City from and against any and all claims, liabilities and damages which may arise from any act or omission of the Buyer, its employees, agents or contractors as a result of the granting of the Right of Entry. If the sale of the Sale Land is not completed on the Closing Date, then the Buyer shall upon the written request of the City, restore the Sale Land back to the state in which it existed prior to the exercising of the Right of Entry. The costs of the restoration shall be at the sole expense of the Buyer and shall be completed within thirty (30) days from the date of the receipt by the Buyer of the City's written request.

11. Insurance

11.1 The Buyer shall maintain during the term of this Agreement such policies of insurance as are described in Schedule "D" hereto, and such additional insurance as the City may require, acting reasonably (the "Policies") for the Sale Land and the Development, effective on and after the Possession Date. The Policies shall be in a form acceptable to the City and endorsed to provide the City at least thirty (30) days notice of cancellation. Certified copies of the Policies shall be provided to the City by the Buyer upon the City's request.

11.2 Notwithstanding the provisions of section 11.1, the Buyer agrees that the Policies' limits do not define or limit the Buyer's liability to the City, nor does the City make any representation or warranty with respect to the adequacy of the Policies in any way whatsoever.

12. Taxes

12.1 All taxes or assessments in the nature of sales taxes, goods and services taxes or value-added taxes which may be charged, levied, or assessed as a result of this Agreement and the sale of the Sale Land (the "**G.S.T.**"), **shall be the responsibility of the Buyer.** The Buyer hereby warrants to the City that they are a registrant pursuant to the applicable tax legislation and will be responsible for the remittance of the GST to the appropriate taxing authority; such registration number being _____. In the event that the Buyer is a registrant, and has the obligation to pay the GST directly to the relevant taxing authority, then the Buyer shall indemnify and save harmless the City from any claims, liabilities or damages which the City may incur in regards to the payment by the Buyer of the GST. If the Buyer nominates another party as transferee or assigns this Agreement, the nominee or assignee's registration number shall be provided by the Buyer to the City; failing which G.S.T. shall be due and payable on the Closing Date. **If the Buyer, the nominee or assignee is not a registrant pursuant to the applicable tax legislation, the G.S.T. shall be due and payable on the Closing Date.**

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13. Soils and Geotechnical Reports

13.1 The Buyer shall promptly provide copies to the City of all soils and geotechnical tests and reports that the Buyer commissions or obtains with respect to the Sale Land while this Agreement is in force (except for those obtained from the City), and shall give the City prompt notice of any subsurface irregularities or defects with regard to the Sale Land that the Buyer becomes aware of.

14. Buy Back Option

14.1 As further consideration for the sale of the Sale Land to the Buyer, the Buyer shall grant to the City the Buy Back Option in the form attached hereto as Schedule "E" (the "Buy Back Option"). The Buyer shall deliver three (3) duly executed copies of the Buy Back Option to the City concurrently with executed copies of this Agreement.

14.2 The City shall be permitted to register the Buy Back Option on title to the Sale Land prior to the Closing Date and the Buy Back Option shall become a Permitted Encumbrance.

15. General

15.1 Any **notices** that may be necessary to be sent to the Buyer shall be mailed, telecopied or delivered to the following **address**:

Phone: _____
Fax: _____

Attention: _____

and in the case of the City, by mailing, telecopying or delivering any notices to the following **address**:

Sustainable Development
Corporate Properties
20th Floor, Century Place
9803 – 102A Avenue N.W.
Edmonton, Alberta T5J 3A3

Phone: (780) 496-6227
Fax (780) 496-6577

Attention: Sharon Swischook

15.2 The City in entering into this Agreement is doing so pursuant to its powers under the **Municipal Government Act**, R.S.A. 2000 Ch. M-26, and any amendments thereto, and nothing in this Agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to the said **Municipal Government Act** and any other legislation in force in the Province of Alberta. The City, as far as it can legally do so, shall only be bound to comply with and carry out the terms and conditions stated in this Agreement, and nothing in this Agreement restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.

SAMPLE

15.3 This Agreement will not be modified, varied or amended except by an instrument in writing signed by the parties hereto. Further, the **waiver** of any term or condition of this Agreement shall be in writing.

15.4 The terms and conditions of this Agreement **shall continue beyond the closing** of the sale of the Sale Land to the Buyer and they **shall not merge** with the transfer of the Sale Land.

15.5 The terms and conditions of this Agreement **shall be binding** upon the respective heirs, executors, administrators, successors and assigns of the City and the Buyer. Prior to the Closing Date, **the Buyer shall not assign** its interest in the Sale Land, without the written approval of the City.

15.6 This Agreement (including the attached schedules) is the entire agreement between the parties with regard to the matters dealt with in it, and there are no understandings or agreements, representations, warranties, conditions or collateral terms, verbal or otherwise, existing between the parties except as expressly set out in this Agreement. The consideration stated herein is the sole consideration and inducement for the execution of this Agreement.

15.7 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of the Agreement.

15.8 **TIME IS TO BE CONSIDERED OF THE ESSENCE OF THIS AGREEMENT** and therefore, whenever in this Agreement either the City or the Buyer is required to do something by a particular date, the time for the doing of the particular thing shall only be amended by written agreement of the City and the Buyer.

15.9 In **reading and interpreting** this Agreement:

- (a) the word **“Buyer”** shall be read and interpreted as in the plural instead of the singular number, if there is more than one buyer named, the terms and conditions of this Agreement shall bind the buyers individually as well as jointly;
- (b) the masculine gender shall include the feminine or a body corporate where in this Agreement, the context or the parties require;
- (c) the word **“shall”** is to be read and interpreted as mandatory and the word **“may”** is to be read and interpreted as permissive; and
- (d) any **bolding or capitalization** of portions of this Agreement have been inserted for emphasis only and are not to be construed as affecting the interpretation or construction of this Agreement.

15.10 All of the Schedules to this Agreement are hereby expressly incorporated into and form part of this Agreement. The Schedules to this Agreement are as follows:

Schedule “A” — Design Guidelines;
Schedule “B” – Buyer’s Acknowledgement
Schedule “C” – Subsequent Buyer’s Acknowledgment

Schedule "D" – Insurance Policies
Schedule "E" – Buy Back Option

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15.11 The City is a licensed Real Estate Brokerage in the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Agreement at the City of Edmonton, in the Province of Alberta, on the day and year first above written.

APPROVED:

THE CITY OF EDMONTON, as
Represented by the Director of Property
Sales, Corporate Properties,
Sustainable Development

AS TO FORM: _____

AS TO CONTENT: _____

Per: _____
Bill Covey (Seal)

BUYER

Per: _____
(Seal)

M-340ma-O (June 14/12)
RES:

SCHEDULE "B"

SAMPLE

BUYER'S ACKNOWLEDGEMENT

TO: THE CITY OF EDMONTON

FROM: _____ (the "Buyer")

RE: SALE OF PLAN _____, BLOCK _____, LOT _____ (the "Sale Land").

THE BUYER HEREBY ACKNOWLEDGES THAT:

1. The City has disclosed to the Buyer and the Buyer is aware that the Sale Land may contain native soils placed under controlled compaction with engineering inspection and density testing ("**Engineered Fill**"), and which may or may not affect the suitability of the Sale Land for development.
2. The Buyer is aware that the Sale Land is to be acquired by the Buyer on a strictly "**as is, where is**" basis and the Buyer shall acquire and take title to the Sale Land at its own risk, with full knowledge, actual or deemed, of all faults and imperfections whatsoever, including without limitation, the Engineered Fill.
3. The City gives no warranty, either express or implied, nor makes any representation that the Sale Land is suitable for purposes of the Buyer's proposed development.
4. The Buyer is solely obligated to satisfy itself as to the quality, condition or sufficiency of the Sale Land for any purpose and without limitation, the suitability of the Sale Land for purposes of the Buyer's proposed development. No development of the Sale Land shall take place by the Buyer unless the design of all footings and foundations of any development shall include specific requirements for suitability with the presence of Engineered Fill, approved by a professional engineer.
5. The Buyer confirms that the City advises that the Buyer must, and the Buyer will, seek independent professional advice with respect to the acquisition and development of the Sale Land, including engineering and legal advice.
6. The Buyer hereby acknowledges having received and read copies of:
 - (a) the Geotechnical Investigation Report No. 2692-115 prepared by J.R. Paine and Associates Ltd. dated April 2005; and
 - (b) the Engineered Fill Report prepared by J.R. Paine and Associates Ltd. dated January 16, 2012.(collectively the "Reports")
7. The Reports have been provided to the Buyer for their review on an informational basis only, and the City makes no representation or warranty with respect to:

SAMPLE

- (a) the content of the Reports including, without limitation the accuracy of the information or recommendations provided therein;
 - (b) the scope, nature or methodology of the investigations on which the Reports are based;
 - (c) the qualifications of the person or entity conducting the assessment or preparing the Reports;
 - (d) the fitness of the Reports for any purpose.
8. The Buyer shall not rely on the Reports in any fashion and any reliance by the Buyer on the Reports is entirely at the Buyer's own risk, and the Buyer hereby releases the City from any claim that the undersigned has, or may have, with respect to the undersigned's reliance on the Reports in any way whatsoever.

IN WITNESS WHEREOF the Buyer has signed this Acknowledgement on this ____ day of _____, 20____.

(Witness)

BUYER:

SCHEDULE "C"

SAMPLE

SUBSEQUENT BUYER ACKNOWLEDGEMENT

TO: THE CITY OF EDMONTON (the "City")

FROM: _____ (the "Buyer")
(please print)

RE: Sale of PLAN _____, BLOCK _____, LOT _____ (the "Sale Land") and Residential Home built by _____ (the "Buyer")

THE BUYER HEREBY ACKNOWLEDGES THAT the Buyer is purchasing the Sale Land and a new home constructed on the Sale Land from the Buyer. The Buyer confirms to the City that the Buyer has disclosed to the Buyer and the Buyer is aware that:

1. The condition of the subsurface of the Sale Land, which includes, for greater clarity and without limitation, the soil conditions, are potentially restrictive of the type and manner of development on the Sale Land (the "**Soil Condition**").

2. The Sale Land contains native soils placed under controlled compaction with engineering inspection and density testing ("**Engineered Fill**"), and which may or may not affect the suitability of the Sale Land for development.

3. The City gives no warranty, either express or implied, nor makes any representation, as to the suitability of the Sale Land for any development thereon.

4. The Buyer confirms that the City advises that the Buyer must, and the Buyer will, seek independent professional advice with respect to the acquisition of the Sale Land, including engineering and legal advice.

5. The Buyer hereby acknowledges having received and read copies of:

- (a) the Geotechnical Investigation Report No. 2692-115 prepared by J.R. Paine and Associates Ltd. dated April 2005; and
- (b) the Engineered Fill Report prepared by J.R. Paine and Associates Ltd. dated January 16, 2012.

(collectively the "Reports")

6. The Reports have been provided to the Buyer for their review on an informational basis only, and the City makes no representation or warranty with respect to:

- (a) the content of the Reports including, without limitation the accuracy of the information or recommendations provided therein;
- (b) the scope, nature or methodology of the investigations on which the Reports are based;

SAMPLE

- (c) the qualifications of the person or entity conducting the assessment or preparing the Reports;
 - (d) the fitness of the Reports for any purpose.
7. The Buyer shall not rely on the Reports in any fashion and any reliance by the Buyer on the Reports is entirely at the Buyer's own risk, and the Buyer hereby releases the City from any claim that the undersigned has, or may have, with respect to the undersigned's reliance on the Reports in any way whatsoever.
8. The Buyer expressly agrees with the City to obtain and forthwith provide to the City, an acknowledgment in the same form and content as this acknowledgment, from any subsequent purchaser of the Sale Land from the Buyer.

IN WITNESS WHEREOF the Buyer has signed this Acknowledgement on this ____ day of _____, 20____.

(Witness)

BUYER

(Witness)

BUYER

SCHEDULE "D"

SAMPLE

POLICIES OF INSURANCE

1. Comprehensive General Liability Insurance in respect of the use and possession of the Sale Land by the Buyer, for bodily injury and/or property damage with policy limits of not less than Two Million (\$2,000,000.00) Dollars per occurrence. Such policy shall be endorsed to provide coverage for Contractual Liability (including this Agreement), Independent Contractors, Employees as Additional Insured, Products and Completed Operations, Non-Owned Automobiles, and Cross Liability. The City shall be identified as an additional insured and such policy shall be primary with respect to the City, its employees, agents and servants.
2. During construction of the Development, All Risk Course of Construction Insurance to cover the entire construction value. Such policy shall show the City as a named insured.
3. Upon completion of the Development, All Risk Property Insurance with policy limits equal to its full replacement cost. Such policy shall contain a waiver by the insurer of any right of claim or recovery by way of subrogation or otherwise against the City, its employees, agents and servants.
4. All Risk Property Insurance for the full value of the Buyer's stock, equipment and improvements (as applicable). Such policy shall contain a waiver by the insurer of any right of claim or recovery by way of subrogation or otherwise against the City, its employees, agents and servants.

SCHEDULE "E"

SAMPLE

THIS OPTION AGREEMENT made this ____ day of ____, 20____

BETWEEN:

THE CITY OF EDMONTON
(the "City")

- and -

(the "Buyer")

WHEREAS the City and the Buyer have entered into an Agreement dated the ____ day of ____, 20____ (the "Sale Agreement"), for the sale by the City to the Buyer of the following land, namely:

PLAN ____
BLOCK ____
LOT ____

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Sale Land").

AND WHEREAS pursuant to the Sale Agreement, the Buyer agreed with the City to construct the Development on the Sale Land; all in the manner stated in the Sale Agreement.

AND WHEREAS the Buyer is prepared to grant to the City an option irrevocable within the time limited herein for exercise to purchase the Sale Land, in accordance with the terms and conditions as hereinafter stated.

NOW THEREFORE WITNESSES THAT for and in consideration of the sum of ONE (\$1.00) DOLLAR now paid by the City to the Buyer, the receipt of which is hereby acknowledged by the Buyer, and in consideration of the sale of the Sale Land by the City to the Buyer, the Buyer hereby grants to the City an irrevocable option to purchase the Sale Land, in accordance with the following terms and conditions:

1. The purchase price for the Sale Land shall be the sum of \$____, less the following sums:
 - (a) Any and all sums owed on a mortgage or mortgages registered against the title to the Sale Land;
 - (b) Any and all sums necessary to discharge all liens, charges, instruments and encumbrances registered against the title to the Sale Land; and

- (c) The costs, if any, of removing a partially completed Development from the Sale Land and levelling the Sale Land to its original condition at the time of the Buyer's commencing construction of the Development in accordance with the provisions of the Sale Agreement (the "Purchase Price").

2. The option herein granted may be exercised by the City on the happening of any of the following events:

- (a) The Buyer has failed to commence to construct the Development on the Sale Land in accordance with section 4.4 of the Sale Agreement. For greater clarity, the term "commence to construct" shall have the same meaning as in the Sale Agreement; or
- (b) The Buyer has failed to substantially complete the construction of the Development on the Sale Land in accordance with section 4.4 of the Sale Agreement. For greater clarity, the term "substantially complete" shall have the same meaning as in the Sale Agreement.

3. The option herein granted is exercisable by the City in the event of the happening of any of the events as set forth in Clause 2 hereof, whereby, the City may serve on the Buyer, a thirty (30) days notice in the manner provided for in this Agreement, and upon the expiration of the time limited in such notice and the Buyer, failing to commence to construct or substantially complete the Development on the Sale Land in the manner provided for in section 2 hereof, as the case may be, then the City may at any time thereafter, in its sole and unfettered discretion, on serving a further written notice to the Buyer exercise the option as provided for in this Agreement.

4. The Buyer shall not be entitled to compensation or damages in respect of improvements which the Buyer may have made upon the Sale Land.

5. Upon the option herein granted being exercised, the following shall be the terms of the Agreement of Purchase and Sale of the Sale Land:

- (a) The Closing Date shall be sixty (60) days after the exercise of the option as herein granted, in accordance with section 3.
- (b) The Purchase Price and any adjustments for taxes, rent or any outgoings shall be paid and adjusted on or before 12:00 noon on the Closing Date.
- (c) On or before the Closing Date, the Buyer shall discharge any liens, charges, instruments, mortgages or other encumbrances that the Buyer has caused to be registered against the title to the Sale Land. Provided however, that the Buyer shall not be obligated to discharge any such liens, charges, instruments, mortgages or other encumbrances if the City shall have deducted, in the manner provided for in Clause 1 hereof, from the Purchase Price as payable by the Buyer pursuant to this Agreement the appropriate total sums necessary to discharge any such liens, charges, instruments, mortgages or other encumbrances.

SAMPLE

(d) Possession of the Sale Land shall be given on the Closing Date.

6. In the event that the Buyer is delayed so as to prevent it from fulfilling its covenants as set forth in section 2 hereof, and such delay is the result of labour disputes, strikes, lock-outs, fire or any cause which in the opinion of the City is beyond the Buyer's control, the Buyer shall not be deemed to be in default and the City shall grant such extension or extensions of the relevant date as shall be reasonable in the circumstances.

7. The City agrees with the Buyer that the City shall postpone its interests under this Agreement in favour of the Buyer's mortgage financing for the construction of the Development on the Sale Land as required pursuant to the Sale Agreement, provided that the Buyer shall deliver to the City a postponement of Caveat in a form acceptable to the City's solicitor.

8. The City shall be at liberty to register a Caveat against the title to the Sale Land to protect the rights granted to it pursuant to this Agreement. At such time as the Buyer shall substantially complete the Development in the manner required under the Sale Agreement, the City shall discharge any Caveat it has registered against the title to the Sale Land for the purpose of protecting the rights granted to it pursuant to the provisions of this Agreement.

9. Any notices that may be necessary to be sent to the Buyer shall be mailed, telecopied or delivered to the following address:

Phone: _____
Fax: _____

Attention: _____

and in the case of the City, by mailing, telecopying or delivering any notices to the following address:

Sustainable Development
Corporate Properties
20th Floor, Century Place
9803 – 102A Avenue N.W.
Edmonton, Alberta T5J 3A3

Phone: (780) 496-6227
Fax (780) 496-6577

Attention: Sharon Swischook

10. The terms and conditions of this Agreement shall be binding upon the respective heirs, executors, administrators, successors and assigns of the City and the Buyer.

11. TIME IS TO BE CONSIDERED OF THE ESSENCE OF THIS AGREEMENT and therefore, whenever in this Agreement either the City or the Buyer is required to do something by a particular date, the time for the doing of the particular thing shall only be amended by written agreement of the City and the Buyer.

SAMPLE

12. In reading and interpreting this Agreement:

- (a) the word “Buyer” shall be read and interpreted as in the plural instead of the singular number, if there is more than one party named, and in such case, the terms and conditions of this Agreement shall bind those parties individually as well as jointly;
- (b) the masculine gender shall include the feminine or a body corporate where in this Agreement, the context or the parties require; and
- (c) the word “shall” is to be read and interpreted as mandatory and the word “may” is to be read and interpreted as permissive.

IN WITNESS WHEREOF the parties hereto have executed this Agreement at the City of Edmonton, in the Province of Alberta, on the day and year first above written.

APPROVED:

THE CITY OF EDMONTON, as
Represented by the Director of Property
Sales, Corporate Properties,
Sustainable Development

AS TO FORM: _____

AS TO CONTENT: _____

Per: _____
Bill Covey (Seal)

Per: _____
(Seal)

M-340ma-O (June 14/12)

RES: