



SAMPLE

Show Home Program – Oxford with Single Family Residence

THIS AGREEMENT made in triplicate this ____ day of ____, 20 ____

BETWEEN:

THE CITY OF EDMONTON
(the “City”)

- and -

(the “Builder”)

A. The City is the registered owner of the land, together with all improvements thereon, legally described as:

PLAN _____
BLOCK _____
LOT _____

EXCEPTING THEREOUT ALL MINES AND MINERALS

in Certificate(s) of Title # _____ (the “Sale Land”).

B. The City has agreed to sell, and the Builder has agreed to purchase, the Sale Land from the City 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 “C” (the “Design Guidelines”);

D. The Builder has agreed to construct a single family residential dwelling on the Sale Land that shall serve as the Builder’s show home (the “Show Home”), all in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION OF the mutual promises contained in this Agreement the City and the Builder agree as follows:

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1. Sale Price

1.1 The Builder shall purchase the Sale Land from the City and the City shall sell the Sale Land to the Builder for the purchase price of _____ (\$_____) DOLLARS plus GST, if applicable (the “Sale Price”), and upon the terms and conditions stated in this Agreement. The Sale Price shall be paid as follows:

- (a) \$_____, to be paid by cheque to the City as a deposit upon the delivery to the City of this Agreement duly executed by the Builder, (the “Deposit”); and
- (b) \$_____, being the balance, to be paid to the City by certified cheque, bank draft or solicitor’s trust cheque on or before the _____ day of _____, 20____ (the “Payment Date”).

1.2 The City shall be at liberty to register a caveat against title to the Sale Land evidencing the City’s status as an unpaid vendor. Upon payment in full of the Sale Price the City shall discharge the aforementioned caveat.

1.3 All monies payable by the Builder under this Agreement shall be paid on the date for payment and at the address for notice to the City as stated in section 15.8 and failing payment, interest shall be charged on all outstanding amounts at the rate of eighteen (18%) per cent per annum, compounded annually.

1.4 If the Builder shall default in the observance or performance of any of the terms and conditions of this Agreement, then the City, by written notice served on the Builder, shall place the Builder on notice of that default and the Builder shall cure such default within ten (10) days of receipt of such notice, or such longer time period as shall be provided for in such notice. If the Builder has failed to cure the default, then the balance of the Sale Price outstanding, together with interest as payable pursuant to this Agreement, shall become due and payable as if the time mentioned in this Agreement for payment of the Sale Price and interest had fully come and expired.

1.5 All costs associated with utility services, auxiliary lanes, curb crossings, paving and median breaks, and modifications, additions, relocations and reconstruction of sidewalks, curbs, gutters, and crossings, as required for any proposed development by the Builder on the Sale Land, shall be at the sole cost of the Builder. All proposed vehicular access points to the Sale Land shall be approved by the Transportation Services of the City at the time of development application. Any damage to City property, including but not limited to curbs, sidewalks, streetlights, boulevards, trees or shrubs, caused by the Builder or those for whom the Builder is responsible in law shall be at the Builder’s cost and expense.

2. Conveyance of Sale Land

2.1 The closing of the sale of the Sale Land shall be completed on the _____ day of _____, 20____ or such other date as the City and the Builder may agree in writing (the “Closing Date”). On the Closing Date the City shall deliver to the Builder a transfer for the Sale Land. Upon registration of the transfer at the appropriate Land Titles Office, title to the Sale Land shall issue in the name of the Builder subject only to the following registrations:

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

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

2.2 Notwithstanding any other provision contained in this Agreement, it is expressly agreed to between the City and the Builder, that the City shall not be obligated to transfer the title to the Sale Land to the Builder in the manner stated in this Section, until such time as the Builder 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; and
- (b) delivered to the City a duly executed copy of the acknowledgement in the form attached hereto as Schedule "D" and forming part of this Agreement.

3. Show Home

3.1 As additional consideration for the sale of the Sale Land by the City to the Builder, the Builder shall:

- (f) obtain all necessary building permits and development approvals for the construction of the Show Home;
- (b) commence to construct the Show Home within six (6) months of the Closing Date;
- (c) substantially complete the construction of the Show Home by the Official Opening date described in section 3.1(g);
- (d) construct the Show Home on the Sale Land in accordance with:
 - (i) this Agreement;
 - (ii) the Design Guidelines as described herein;
 - (iii) the Plans (as defined herein) as approved by the Manager (as defined herein);
 - (iv) the Sustainable Certification as described in section 7 herein;
 - (v) the existing RSL zoning for the Sale Land; and

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- (vi) all applicable federal, provincial and municipal laws, regulations and codes, including, without limitation, the Alberta Building Code;
- (e) upon completion of the Show Home, obtain a final lot grading approval pursuant to the *Subsurface Drainage Bylaw Number 11501* for the Sale Land;
- (f) obtain the Sustainable Certification as described in section 7;
- (g) complete the improvements to the Sale Land, which shall include, without limitation, erection or placement of the Show Home on the Sale Land (which includes, for clarity, the construction of all walkways, driveways, landscaping and other improvements to the Sale Land, and professionally decorate and furnish the Show Home to such standards as are satisfactory to the City in its sole discretion, so that the Show Home is ready for public viewing prior to the ____ day of ____, 20____ (the “Official Opening”);
- (h) continuously, actively and diligently operate the Show Home as a show home during the period commencing on the Official Opening and expiring on the ____ day of ____, 20____ (the “Show Period”);
- (i) ensure that no writs of enforcement, builders’ liens or other charges (save for the Builder’s construction financing, if required) (the “Charges”) whatsoever are filed against the Sale Land prior to the Payment Date, and promptly discharge any Charges so registered.

3.2 The Show Home or any part of it shall not be removed or destroyed prior to the expiration of the Show Period without the consent of the City. The Builder shall repair and maintain and shall not do or permit to be done any act of waste to the Sale Land or the Show Home prior to the expiration of the Show Period. For greater certainty, the Builder shall keep the Show Home open for public viewing during the Show Period during such hours as specified by the City and the Builder shall ensure that the Show Home is properly staffed (to the City’s satisfaction, acting reasonably) during hours of operation. The Builder acknowledges and agrees that failure to carry out its duties pursuant to this section 3.2 will cause damage and loss to the City.

3.3 Provided that the Builder is not in default of any of the terms and conditions of this Agreement, the City shall reserve for sale by the City to the Builder during the Show Period, those lots in the subject Oxford subdivision that are shown outlined in red on the attached Schedule “F” (the “Production Lots”), all in accordance with the following requirements:

- (a) the Builder shall notify the City in writing during the Show Period when the Builder wishes to purchase one or more of the Production Lots;
- (b) the Builder shall execute a sale agreement during the Show Period in a form and content acceptable to the City Manager or his designate, for each of the Production Lots to be purchased by the Builder;

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- (c) the Builder shall not assign or transfer its interest in any such agreement for sale to any third party for a purchase price that is greater than that which the Builder has paid to the City for each of the respective Production Lots purchased by the Builder from the City;
- (d) the Builder shall carry out all construction and development on the Production Lots in accordance with the applicable sale agreement.

3.4 The Builder expressly agrees that the Builder shall not register a caveat against any of the Production Lots. For certainty the City shall be at liberty to sell the Production Lots to whomever the City so chooses upon the expiry of the Show Period if the Builder has not complied with subsections 3.3(a) and 3.3(b) herein.

3.5 Notwithstanding any term or condition in this Agreement, as additional consideration for the sale of the Sale Land by the City to the Builder, the Builder shall prior to the commencement of construction of the Show Home, submit to the City the plans, specifications and drawings for the Show Home (the “**Plans**”), to obtain the approval of the Manager of the Corporate Properties Branch of the Sustainable Development Department of the City or his designate (the “**Manager**”).

3.6 The Builder and the City acknowledge and agree that the Manager’s approval of the Plans is strictly limited to an approval of the Builder’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 Show Home with soil or subsurface conditions of the Sale Land.

3.7 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 Closing Date and shall substantially complete the construction of the Development by the Official Opening date described in section 3.1(g). In the event that the date for the Builder to substantially complete the Development falls within the period from November 1st to June 30th, then the date for the Builder to substantially complete the Show Home shall be extended to the immediately following July 31st.

4. Performance Fees

4.1 As additional consideration for the sale of the Sale Land by the City in accordance with this Agreement, the Builder shall provide to the City, concurrently with the delivery to the City of this Agreement executed by the Builder:

- (a) a cheque or such other security as is acceptable to the City, for an amount of _____ (\$_____) Dollars (the “**Show Home Performance Fee**”);

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

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

Show Home Performance Fee

4.2 If the Builder shall default in it’s obligations to continuously, actively and diligently operate the Show Home as a show home during the Show Home Period pursuant to the terms and conditions as contained herein, the Show Home 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. Without limiting the generality of the foregoing, the City may deduct from the Show Home Performance Fee the following amounts if the Builder is in default of the following:

- (a) Construction (as described in subsection 3.1(b) not completed by Official Opening: \$_____.00
- (b) Furnishing and decorating not completed by Official Opening: \$_____.00
- (c) Closure of Show Home prior to the end of the Show Period: \$_____.00
- (d) Failure to discharge a Charge against the Sale Land: the amount of the Charge up to the full amount of the Show Home Performance Fee (without in any way limiting the Builder’s obligations herein)

4.3 If all or part of the Show Home Performance Fee is forfeited by the Builder, the City shall be under no obligation to expend any portion of the Show Home Performance Fee for the purposes of the carrying out of the obligations of the Builder relating to the Show Home pursuant to this Agreement, however, should the City do so, the Builder shall promptly top up the Show Home Performance Fee to the full amount required under this Agreement. Provided further, notwithstanding a forfeiture of the Show Home Performance Fee by the Builder, 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.

4.4 The Builder acknowledges and agrees with the City that the Show Home 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 Builder 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.

4.5 Provided the Builder is not in default under this Agreement, within thirty (30) days of receipt by the City of a written request by the Builder to the City following the closure of the Show Home at the expiry of the Show Period, the Show Home Performance Fee, less any earned interest, shall be returned to the Builder.

Design Guidelines Performance Fee

4.6 If the Builder shall default in its obligations to construct the Show Home in accordance with the Design Guidelines and obtain the final lot grading approval 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.

4.7 If all or part of the Design Guidelines Performance Fee is forfeited by the Builder, 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 Builder relating to the Design Guidelines pursuant to this Agreement, however, should the City do so, the Builder 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 Builder, 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.

4.8 The Builder 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 Builder 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.

4.9 Upon completion of the Show Home and the issuance of the final lot grading approval pursuant to the *Subsurface Drainage Bylaw Number 11501* for the Sale Land the Builder 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 Builder upon the City's consultant confirming that the Show Home has been constructed in accordance with the Design Guidelines and the final lot grading approval for the Sale Land has been obtained.

Sustainable Certification Performance Fee

4.10 If the Builder 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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4.11 If all or part of the Sustainable Certification Performance Fee is forfeited by the Builder, 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 Builder relating to the Sustainable Certification. Provided further, notwithstanding a forfeiture of the Sustainable Certification Performance Fee by the Builder, 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.

4.12 The Builder 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 Builder 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.

4.13 Provided the Builder is not in default under this Agreement, 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 Builder.

5. Possession

5.1 The Builder shall be granted possession of the Sale Land by the City on the Closing Date. On and after the Closing Date, the Builder 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 Closing Date.

6. Conditions Precedent

6.1 Notwithstanding any term or condition in this Agreement, the sale by the City to the Builder of the Sale Land is expressly subject to and conditional upon the Builder conducting such independent soil and geotechnical tests as may be required to prove to the satisfaction of the Builder that the Sale Land is in a state satisfactory for the Builder's proposed development of the Sale Land (the "Soils Condition"). The Soils Condition is to be fulfilled on or before the ____ day of ____, 20____, or such other date as the City and the Builder may agree in writing (the "Soils Condition Date"). The Builder shall provide copies of all soil and geotechnical tests conducted by the Builder 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 Builder;

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- (b) the Deposit and the Performance Fees shall be returned to the Builder, less any and all earned interest on the Deposit or the Performance Fees, which shall be to the benefit of the City;
- (c) upon return of the Deposit and the Performance Fees to the Builder, all rights and obligations of the City and the Builder pursuant to this Agreement shall be at an end except as otherwise stated in this Agreement;
- (d) the Builder shall promptly discharge any caveat, encumbrance, lien, charge or other instrument which the Builder may have registered or caused to be registered against the title to the Sale Land; and
- (e) the Builder shall not have any further obligation or liability to the City and the City shall have no further rights as against the Builder, including any claim to damages, excluding subsection 6.2(d) and section 11 of this Agreement.

6.3 If the Soils Condition is **fulfilled in the manner and time herein stated**, but the Builder **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 Performance Fees and all earned interest on the Deposit and Performance Fees shall be immediately forfeited to the City as liquidated damages and not as a penalty;
- (b) the interest of the Builder 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 Builder shall promptly discharge any caveat, encumbrance, lien, charge or other instrument which the Builder may have registered or caused to be registered against the title to the Sale Land; and
- (d) the Sale Land shall revert to and revest in the City and the City shall not have any further obligation or liability to the Builder with respect to the Sale Land.

6.4 All costs incurred by the Builder with respect to the fulfillment of the Soils Condition shall be solely at the Builder's expense. The Soils Condition is for the mutual benefit of the Builder and the City and must be fulfilled.

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 Builder, the Builder shall:

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- (a) ensure that the Show Home 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 Show Home has been constructed in accordance with this section 7.

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

7.2 The Builder expressly acknowledges and agrees that the requirement that the Builder participate in the BuiltGreen Alberta program as described herein is to the benefit of the Builder, 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 Builder. The Builder shall be solely responsible for ensuring the suitability of such program to the Builder’s development.

8. Buyback Option

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

8.2 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.

9. Warranties and Representations

9.1 Notwithstanding any term or condition in this Agreement, the Builder shall, except as provided in this Agreement and in particular, this section 9, purchase the Sale Land on the understanding and agreement that:

- (a) there are no agreements, conditions, warranties or representations relating to the Sale Land;
- (b) 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; and

- (v) the compliance of the Sale Land with any municipal laws;
- (c) the Sale Land is being sold to the Builder on a strictly “as is, where is” basis and the Builder 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 Builder shall have satisfied itself as to the condition of the Sale Land and the fitness for its intended use;
- (e) the Builder:
 - (i) confirms to the City that the Builder 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 Builder 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 Builder, then the Builder shall have satisfied itself through independent inspections and investigations of the soil and subsurface conditions of the Sale Land that the Builder fully accepts the Sale Land in this regard.

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.

10. Engineered Fill

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

10.2 Upon the transfer of the Sale Land by the Builder to a subsequent buyer, the Builder shall deliver to the City a written acknowledgement in the form attached hereto as Schedule “E” and forming part of this Agreement, whereby the immediate buyer from the Builder (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 Builder hereby agrees to indemnify and save harmless the City from and against any and all actions, causes of actions, claims, liabilities, demands, or

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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.

10.3 The Builder 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 Builder 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 .

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

11. Right of Entry

11.1 Upon the date of execution of this Agreement by the City and the Builder, the Builder 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 Builder to appraise the Sale Land for its proposed development. The Builder 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 Builder, 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 Builder 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 Builder and shall be completed within thirty (30) days from the date of the receipt by the Builder of the City's written request.

12. Insurance

12.1 The Builder shall maintain during the term of this Agreement such policies of insurance as are described in Schedule "A" hereto, and such additional insurance as the City may require, acting reasonably (the "Policies") for the Sale Land and the Show Home, effective on and after the Closing 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 Builder upon the City's request.

12.2 Notwithstanding the provisions of section 12.1, the Builder agrees that the Policies' limits do not define or limit the Builder'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.

13. Taxes

13.1 All applicable taxes and assessments in the nature of sales taxes, goods and services taxes or value added taxes (the "GST"), which may be charged, levied or assessed as a result of the Builder's purchase of the Sale Land, shall be paid by the Builder. The Builder 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 Builder is a registrant, and has the obligation to pay the GST directly to the relevant taxing authority, then the Builder 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 Builder of the GST.

14. Soils and Geotechnical Reports

14.1 The Builder shall promptly provide copies to the City of all soils and geotechnical tests and reports that the Builder 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 Builder becomes aware of.

15. General

15.1 The City in entering into this Agreement is doing so in its capacity as an owner of real property and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to the Municipal Government Act, R.S.A. 2000 c. M-26, and any amendments thereto, 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.

15.2 This Agreement will not be modified, varied or amended except by an instrument in writing signed by the parties hereto.

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

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15.4 The terms and conditions of this Agreement shall be binding upon the respective successors and assigns of the City and the Builder. Prior to the Payment Date, the Builder shall not assign its interest in the Sale Land, without the written approval of the City.

15.5 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.

15.6 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.

15.7 TIME IS TO BE CONSIDERED OF THE ESSENCE OF THIS AGREEMENT and therefore, whenever in this Agreement either the City or the Builder 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 Builder.

15.8 Any notices that may be necessary to be sent to the Builder 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 Phone: (780) 496-6227
Corporate Properties Fax: (780) 496-6577
20th Floor, Century Place
9803 – 102A Avenue N.W.
Edmonton, Alberta T5J 3A3 Attention: Sharon Swischook

15.9 In reading and interpreting this Agreement:

- (a) the word “Builder” shall be read and interpreted as in the plural instead of the singular number if there is more than one Builder named, and the terms and conditions of this Agreement shall bind the builders 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;

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- (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 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” — Insurance Policies;
- Schedule “B” – Buy-Back Option Agreement.
- Schedule “C” – Sustainability and Architectural Design Guidelines
- Schedule “D” – Builder’s Acknowledgement
- Schedule “E” – Subsequent Buyer’s Acknowledgment
- Schedule “F” – Plan showing Production Lots

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)

Per: _____
(Seal)

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

POLICIES OF INSURANCE **SAMPLE**

1. Comprehensive General Liability Insurance in respect of the use and possession of the Sale Land by the Builder, 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 Show Home, 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 Show Home, 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 Builder'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 "B"

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

SAMPLE

BETWEEN:

THE CITY OF EDMONTON

(the "City")

- and -

(the "Builder")

WHEREAS the City and the Builder have entered into an Agreement dated the ____ day of _____, 20____ (the "Sale Agreement"), for the sale by the City to the Builder 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 Builder agreed with the City to construct and operate a show home on the Sale Land; all in the manner stated in the Sale Agreement.

AND WHEREAS the Builder 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 Builder, the receipt of which is hereby acknowledged by the Builder, and in consideration of the sale of the Sale Land by the City to the Builder, the Builder 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 show home from the Sale Land and levelling the Sale Land to its original condition at the time of the Builder's commencing construction of the show home 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 Builder has failed to commence to construct the show home on the Sale Land in accordance with section 3.7 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 Builder has failed to substantially complete the construction of the show home on the Sale Land in accordance with section 3.7 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 Builder, 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 Builder, failing to commence to construct or substantially complete the show home 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 Builder exercise the option as provided for in this Agreement.

4. The Builder shall not be entitled to compensation or damages in respect of improvements which the Builder 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 Builder shall discharge any liens, charges, instruments, mortgages or other encumbrances that the Builder has caused to be registered against the title to the Sale Land. Provided however, that the Builder 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 Builder pursuant to this Agreement the appropriate total sums necessary to discharge any such liens, charges, instruments, mortgages or other encumbrances.

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

6. In the event that the Builder 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 Builder's control, the Builder 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 Builder that the City shall postpone its interests under this Agreement in favour of the Builder's mortgage financing for the construction of the show home on the Sale Land as required pursuant to the Sale Agreement, provided that the Builder 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 Builder shall substantially complete the show home 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 Builder 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	Phone: (780) 496-6227
Corporate Properties	Fax (780) 496-6577
20th Floor, Century Place	
9803 – 102A Avenue N.W.	
Edmonton, Alberta T5J 3A3	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 Builder.

11. TIME IS TO BE CONSIDERED OF THE ESSENCE OF THIS AGREEMENT and therefore, whenever in this Agreement either the City or the Builder 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 Builder.

SAMPLE

12. In reading and interpreting this Agreement:

- (a) the word “Builder” 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)

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

SCHEDULE "D"

SAMPLE

ACKNOWLEDGEMENT

TO: THE CITY OF EDMONTON

FROM: _____ (the "Builder")

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

THE BUILDER HEREBY ACKNOWLEDGES THAT:

1. The City has disclosed to the Builder and the Builder 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 Builder is aware that the Sale Land is to be acquired by the Builder on a strictly "as is, where is" basis and the Builder 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 Builder's proposed development.
4. The Builder 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 Builder's proposed development. No development of the Sale Land shall take place by the Builder 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 Builder confirms that the City advises that the Builder must, and the Builder will, seek independent professional advice with respect to the acquisition and development of the Sale Land, including engineering and legal advice.
6. The Builder 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 Builder 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 Builder shall not rely on the Reports in any fashion and any reliance by the Builder on the Reports is entirely at the Builder's own risk, and the Builder 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 Builder has signed this Acknowledgement on this ____ day of _____, 20____.

(Witness)

BUILDER:

SCHEDULE "E"

SUBSEQUENT BUYER'S 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 "Builder")

THE BUYER HEREBY ACKNOWLEDGES THAT the Buyer is purchasing the Sale Land and a new home constructed on the Sale Land from the Builder. The Buyer confirms to the City that the Builder 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")

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:
 - (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.
9. 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