

SHOWHOME AGREEMENT
"INSERT SUBDIVISION NAME"
AGREEMENT NO. DS-XXXX S

THIS AGREEMENT made this day of , A.D. 2013.
BETWEEN:

THE CITY OF EDMONTON
a Municipal Corporation
(hereinafter referred to as the "City")

OF THE FIRST PART,

and

"INSERT DEVELOPER NAME"
(hereinafter referred to as the "Owners")

OF THE SECOND PART,

WHEREAS the Owners are the registered owners of all or a portion of those certain lands within the City of Edmonton legally described on Certificates of Title No.'s **"Insert Title Numbers"**, attached hereto as Schedule "A", and which is shown outlined on the sketch plan attached hereto as Schedule "B" (the "Lands");

AND WHEREAS the Owners have applied for subdivision of the Lands, and the Subdivision Authority, at its meeting of **"Approval Date"**, File No. **"Subdivision File No."**, approved the said subdivision in accordance with the aforesaid sketch plan, and subject to certain conditions;

AND WHEREAS the Owners want to construct a number of Show Homes on the Lands prior to registration of the Plan of Subdivision for the Lands;

AND WHEREAS the Owners acknowledge that they will proceed with the construction of the Show Homes at their sole cost, risk and expense subject to the terms and conditions herein set out;

IN CONSIDERATION of the City consenting to the construction of Show Homes on the Lands prior to registration of the Plan of Subdivision and in consideration of the mutual and other covenants hereinafter contained, the parties hereto hereby covenant and agree as follows:

ARTICLE 1: CONDITIONS PRECEDENT

1.1 This Agreement is conditional on all of the following being completed by the Owners prior to construction of Show Homes on the Lands, and in any event not later than **"Conditions Precedent Date"**, and shall not come into force and effect until the following conditions have been met:

- a) the Owners have paid to the City the sum of **\$ 1,000.00** as the Show Home Agreement Fee, plus the sum of **\$ 50.00** as payment of the Goods and Services Tax, hereinafter referred to as ("G.S.T."), on such amount as assessed, charged and levied by the Government of Canada. The City's G.S.T. registrant's number is R119326270; and
- b) the Owners have provided to the City a letter of credit (the "Security") in the amount of **\$ "Letter of Credit Amount = \$10,000.00/showhome"**, and evidence of insurance, in accordance with Article 7;

In the event that the conditions have not been met by the date specified above, this Agreement is void and of no force and effect.

ARTICLE 2: DEFINITIONS

2.1 "Subdivision Authority Approval" shall mean the Subdivision Authority approval of the subdivision of the Lands.

2.2 "Proposed Lots" shall mean the lots as approved by the Subdivision Authority Approval to be created from the Lands.

2.3 "Residential Servicing Agreement" shall mean a residential servicing agreement to be entered into between the Owners and the City for the provision of orderly servicing of the Lands, including the installation and construction by the Owners of certain municipal improvements required as a condition of the Subdivision Authority Approval.

2.4 "Show Homes" shall mean buildings or structures used for a limited period of time for the purpose of marketing residential land or buildings, Residential Sales Centres as defined under the City of Edmonton Zoning Bylaw No. 12800, which buildings or structures are not under any circumstances to be used for dwellings or residences.

ARTICLE 3: CONSTRUCTION OF SHOW HOMES

3.1 The Owners agree that they shall construct no more than **"Number of Showhomes"** Show Homes on the Lands and that the Show Homes shall be located at those locations and on those Proposed Lots as shown on Schedule "B".

3.2 The Owners agree that prior to the commencement of any clearing, excavation or other work in respect of the construction of the Show Homes, the Owners shall:

- a) have a qualified Alberta Land Surveyor survey the Proposed Lots in accordance with the Plan of Subdivision for the Lands to be registered pursuant to the Subdivision Authority Approval;
- b) have a qualified Alberta Land Surveyor stake the Proposed Lots on which such Show Homes are to be located prior to the commencement of any excavation work on the Proposed Lots;
- c) provide access to the Show Homes in those locations shown on Schedule "B" such that the total unobstructed distance from a fire hydrant to the principal entrance of each Show Home is not more than ninety (90) metres or such distance as approved by Fire Rescue Operations. The access road shall be constructed to City standards suitable for fire truck use; and
- d) have a sign erected on the Proposed Lots on which the Show Homes are to be located, exterior to the Show Homes, for the purpose of advising members of the general public that the Show Homes are not for sale and cannot be occupied until servicing of the Lands is completed and occupancy permits obtained. The words on the signage shall be as follows:

"The Show Homes have been permitted for the sole purpose of marketing homes in this proposed subdivision. Please be advised that these Show Homes cannot be sold or occupied as residential dwellings until the subdivision servicing has been inspected and approved and Occupancy Permits issued by the City of Edmonton. For more information call

"Insert Developer Name and Phone Number"."

The physical nature of the sign and its location shall be in accordance with the City of Edmonton Zoning Bylaw and meet the approval of the Development Officer.

3.3 The Owners agree that they shall maintain the sign in accordance with Article 2.2(d) until the Show Homes are no longer considered Show Homes in accordance with this Agreement.

3.4 The Owners agree that they shall not enter into any agreements for the sale of the Show Homes or for the transfer of any interest in the Show Homes or the Proposed Lots on which the Show Homes are located to any person or corporation until the Show Homes are no longer considered Show Homes in accordance with this Agreement.

3.5 The Owners herein further promise and agree:

- a) to ensure that the Show Homes are constructed on the Proposed Lots in such a manner that the Show Homes will comply with all development requirements of single family detached houses in an "Insert Zoning Type" Zone as set out in the City of Edmonton Zoning Bylaw;
- b) that prior to opening the Show Homes for viewing by the general public, the Owners shall provide a sanitary privy in accordance with Article 7.2.3 of the Alberta Building Code 2006; and
- c) that the Show Homes shall not be occupied for residential purposes until the Show Homes are no longer considered to be Show Homes in accordance with this Agreement.

3.6 The Owners agree that they shall remove the Show Homes from the Proposed Lots, fill in any excavations and return the Lands to substantially the same condition it was in prior to the commencement of excavation for the construction of the Show Homes, in the event that any one of the following occurs:

- a) The Owners fail to enter into an unconditional Residential Servicing Agreement with the City of Edmonton within one (1) year of the date of this Agreement; or
- b) The Owners fail to register a Plan of Subdivision for the Lands in accordance with the Subdivision Authority Approval within one (1) year of the date of entering into this Agreement; or
- c) Upon subdivision of the Lands and creation of the Proposed Lots in accordance with Subdivision Authority Approval, the Show Homes fail to meet the development requirements of single family detached houses in an "Insert Zoning Type" Zone as set out in the City of Edmonton Zoning Bylaw; or
- d) The Owners fail to provide and maintain the Letter of Credit in accordance with this Agreement.

3.7 The Owners acknowledge that they shall be responsible for and shall meet and obtain at their own cost and expense any and all approvals, licenses, permits and permissions required under any legislation of the Province of Alberta, the Government of Canada or any bylaw of the City of Edmonton. Without restricting the generality of the forgoing, the Owners shall obtain the following requisite permits and licenses:

- a) a development permit, including a development permit for use as a Residential Sales Centre; and
- b) a building permit.

The Owners acknowledge that nothing herein or done or permitted hereunder shall be taken as or be compliance with the requirements of such statutes, bylaws or regulations.

3.8 The Owners shall within two (2) weeks of commencement of construction of the basement for each of the Show Homes provide to the General Manager of the Sustainable Development Department or his designate, a Real Property Report for each of the Show Homes showing the location of the foundation walls.

3.9 The Owners and the City agree that the Show Homes are no longer considered Show Homes in accordance with this Agreement upon the issuance of a Construction Completion Certificate for the water services and sanitary sewer services to be constructed within the Lands in accordance with a Residential Servicing Agreement to be entered into between the Owners and the City for the provision of orderly servicing of the Lands. Thereafter the use of buildings or structures shall no longer be governed by this Agreement.

3.10 The Owners, in proceeding with and effecting work on or in respect of the Lands or the Show Homes, do so at their sole risk, cost and expense and will and do hereby indemnify and save harmless the City from and in respect of any and all such risks, costs and expenses. Nothing herein nor any action or steps taken by the City under or in respect hereof shall in any way whatsoever obligate the City or any of its employees or officers to adopt, accept or approve any plans for the construction or installation of services, or to complete or enter into any Residential Servicing Agreement, or to approve or endorse any Plan of Subdivision.

3.11 If the Residential Servicing Agreement is not entered into between the City and the Owners, or the Owners fail to register the Plan of Subdivision of the Lands, for any reason whatsoever, including being unable to meet a condition of the Subdivision Authority Approval which is beyond their control, then this Agreement shall govern the responsibilities, duties and rights between the Owners and the City.

3.12 The Owners acknowledge that nothing herein or in the City's permission hereunder shall be or be taken to be permission to enter upon any lands, or facilities of the City or any third party for the purposes of connecting to municipal services, including water, or sanitation services operated by the City.

3.13 Without limitation, the Owners further acknowledge that they remain liable for payment of Permanent Area Contributions and Arterial Roadway Assessments as required under the terms of the Subdivision Authority Approval through the Residential Servicing Agreement. The Owners further acknowledge that this Agreement is not considered the Residential Servicing Agreement with the City which is a requirement of Subdivision Authority Approval.

3.14 All works constructed or installed by the Owners prior to the execution and delivery by the Owners of the Residential Servicing Agreement shall be undertaken by the Owners at the sole risk, cost and expense of Owners and the Owners covenant and agree:

a) that they shall, and do hereby, indemnify and save harmless the City, its servants, agents and employees from and against any and all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever which may be brought or made against the City or its servants, agents or employees or which the City or its servants, agents or employees may sustain, pay or incur as a result of or in connection with any activities undertaken by the Owners in accordance with the permission hereunder granted; and

b) that the Owners do hereby release and forever discharge the City, its servants, agents and employees of and from all manner of actions, causes of actions, suits, accounts, claims or demands whatsoever which the Owners may now or hereafter have for or by reason of anything whatsoever arising out of or connected in any way with the exercise by the Owners of the permission hereby granted.

3.15 The Owners acknowledge that nothing herein or done or permitted hereunder shall be taken as or be considered permission by the City for the commencement of construction of any municipal

improvements which are ordinarily the subject of a Residential Servicing Agreement prior to the Owners and the City entering into the Residential Servicing Agreement.

ARTICLE 4: LETTER OF CREDIT

4.1 To ensure compliance with the terms and conditions of this Agreement, the Owners shall, upon execution of this Agreement, provide such irrevocable and unconditional security as is acceptable to the Corporate Services Department, Law Branch of the City, the Letter of Credit, in the amount set out in Article 1.1(b), and keep in good standing the Letter of Credit until a CCC has been issued for water services and sanitary sewer services constructed pursuant to the Residential Servicing Agreement, or upon removal of the Show Homes and the return of the Lands to the condition it was in prior to commencement of construction of the Show Homes, in accordance with Article 2.6 herein, whichever first occurs.

4.2 The Letter of Credit shall be for an initial term of not less than one (1) year, and shall be renewed by the Owners at least thirty (30) days prior to its expiry, and delivered to the Financial Services Director in the Sustainable Development Department of the City as many times as is necessary until released by the City. The expiry date for the Letter of Credit shall fall on a week day, which is not a statutory holiday. The Letter of Credit shall provide that partial draws are allowed and shall state that it is to be available as security for any and all obligations whatsoever of the Owners under this Agreement.

4.3 In addition to the situations specifically identified in other provisions of this Agreement as being circumstances under which the City may draw on the Letter of Credit, the City may draw on the Letter of Credit if:

- a) it is not renewed to the satisfaction of the Corporate Services Department, Law Branch of the City and in accordance with Article 3.2 above; or
- b) the Owners default on any of their obligations under this Agreement, in the opinion of the City, including without limitation, the obligation to return the Lands to the condition it was in prior to the commencement of the construction of the Show Homes in accordance with Article 2.6.

4.4 In the event that the City draws on the Letter of Credit, pursuant to Article 3.3 or any other Article of this Agreement which gives the City the right to draw on the Letter of Credit, the proceeds shall be used to pay:

- a) the reasonable costs incurred by the City in drawing upon the Letter of Credit including, but not limited to transportation and actual out of pocket expenses; and
- b) to pay all costs incurred by the City in completing the work or any obligations of the Owners which the Owners have defaulted upon, giving rise to the City's right to draw on the Letter of Credit.

If the proceeds of the Letter of Credit are not sufficient to cover the above noted items, the Owners shall pay any shortfall to the City immediately upon being invoiced therefor. The City shall provide an accounting to the Owners indicating how the proceeds of the Letter of Credit were used within sixty (60) days after the completion of the work required to return the Lands to the condition it was in prior to the commencement of the construction of the Show Homes, including the removal of all buildings constructed on the Lands. No interest shall be paid by the City on the surplus funds.

ARTICLE 5: NOTICE

5.1 Any notice to be given pursuant to the terms of this Agreement shall be sufficiently given:

- a) in case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

Director, Development Coordination
Sustainable Development Department
5th Floor, 10250 - 101 Street NW
Edmonton, AB T5J 3P4

and also to:

Corporate Services, Law Branch
9th Floor, Chancery Hall
3 Sir Winston Churchill Square NW
Edmonton, AB T5J 2C3;

- b) in case of notice to the Owners, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

"Developer Name"
"Developer Address"

or, if the City determines it to be more appropriate, to:

"Consultant Name"
"Consultant Address"

5.2 Notice given as aforesaid, if posted in Alberta, other than during a postal disruption, shall conclusively be deemed to have been given on the fifth business day following the date on which such notice is mailed. Notice during a postal disruption shall be personally delivered. Any notice personally delivered shall be deemed to have been given on the date of actual delivery.

5.3 Either party may, at any time, give notice in writing to the other of any change in address of the party giving such notice and, from and after the giving of such notice, the address therein specified shall be deemed to be the address of the said party for the giving of notice hereunder.

5.4 The word "notice" in this Article 4 shall be deemed to include any requests, applications, information, statements or other writing required or permitted to be given by either party to the other.

ARTICLE 6: GENERAL

6.1 Time shall be of the essence of this Agreement, and of every part hereof.

6.2 The Owners shall indemnify and save harmless the City, its servants, agents and employees, from and against any and all claims, losses, demands, payments, actions, suits, judgements, damages and expenses of every nature and kind brought or claimed against the City, its servants and agents, by any party whatsoever, which may arise directly, indirectly or incidentally, in tort or in contract, or either, out of the performance or non-performance by the Owners of their obligations under this Agreement, except any such claims which are caused by the wilful misconduct or negligence of the City, its officers or employees.

6.3 Whenever the singular or neuter or masculine is used in this Agreement, it shall be construed as meaning the plural or feminine or body corporate, where the context so requires.

6.4 In the event that this Agreement is executed by more than one (1) party as an Owner hereunder, all covenants, conditions, obligations and agreements herein contained shall be construed as taken as against all executing parties, as joint and several.

6.5 The parties covenant and agree to do such things, to issue such instructions and to execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

6.6 The City shall be entitled to register a Caveat under the *Land Titles Act*, Chapter L-5, R.S.A., 1980, as amended, in respect of the within Agreement against the Certificate of Title for the Lands. The Caveat shall be registered for the purpose of providing notice of the responsibilities of the parties under the within Agreement. Upon compliance by the Owners with the within Agreement, as evidenced by the registration of the Plan of Subdivision for the Lands and upon receipt by the City of a written request for a discharge of the said Caveat, the City shall prepare the said discharge of Caveat.

6.7 This Agreement shall not nullify, replace, circumvent, extend or modify any existing statutes, bylaws, or permit conditions which govern development or construction within the City.

6.8 No condonation, forgiveness, waiver or forbearance by any party of any non-observance or non-performance by any other party of any of the provisions hereunder will operate as a waiver or forbearance against the first such party in respect of any such provision or any subsequent non-observance or non-performance by any party of any of the provisions hereunder.

6.9 In the event that one or more articles of this Agreement are declared invalid or unenforceable by a Court of competent jurisdiction, the parties agree that such article or articles shall be severable from the remainder of this Agreement, and that the other provisions herein shall continue in full force and effect.

6.10 Notwithstanding Article 2.4, this Agreement shall not be assigned without consent of the City, and only upon arrangements, satisfactory to the City, made with the assignee of the Owners to secure payment by the assignee of the costs to be borne and Letter of Credit to be carried, by the Owners pursuant to this Agreement.

6.11 The Owners covenant and agree that they shall obtain the same covenants as are herein contained, including this covenant, from any person to whom they may, in any way, convey the fee simple estate of the Lands, or any part thereof, prior to registration of the Plan of Subdivision for the Lands, so that the said covenants shall be enforceable by the City.

6.12 This Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, successors and approved assigns.

6.13 This Agreement shall not be modified or amended excepted by an instrument in writing signed by the parties hereto.

6.14 It is agreed that this written instrument embodies the entire agreement of the parties hereto with regard to the matters dealt with herein, and that no other understandings or agreements, verbal or otherwise, exist between the parties.

6.15 The validity and interpretation of this Agreement, and of each article and part hereof, shall be governed by the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their duly authorized officers in that behalf on the day and year first above written.

THE CITY OF EDMONTON

(As represented by the Director of Development
Coordination, Current Planning Branch,
Sustainable Development Department)

DIRECTOR, DEVELOPMENT COORDINATION

Approved:

As to form _____
Corporate Services Department, Law Branch

As to contents _____
Sustainable Development Department

"INSERT DEVELOPER NAME"

PER: _____

PER: _____
[sign and affix corporate seal over signature(s)]