



SHOWHOME AGREEMENT

AGREEMENT NUMBER: SA"AGREEMENT NUMBER"

CITY CLERKS FILE NUMBER: _____

"PROJECT NAME"

**SHOWHOME AGREEMENT
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ARTICLE 2 CONSTRUCTION OF SHOWHOMES

2.1 The Owners agree that they shall construct no more than **"Number of showhomes (X)"** Showhomes on the Development Lands and that the Showhomes shall be located at those locations and on those Proposed Lots as shown on Schedule "B".

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

(a) have a qualified Alberta Land Surveyor survey the Proposed Lots in accordance with the Plan of Survey for the Development Lands to be registered pursuant to the Subdivision Authority Approval;

(b) have a qualified Alberta Land Surveyor stake the Proposed Lots on which such Showhomes are to be located prior to the commencement of any excavation work on the Proposed Lots;

(c) provide a Temporary Access Road to the Showhomes. Once constructed, the Owners' consulting engineer shall provide a letter to the Senior Development Engineer in the Subdivision and Development Coordination Section, certifying that the Temporary Access Road has been constructed in accordance with Sections 02335, 02342, 02345 and 02722 of Volume 2 of the City of Edmonton Design and Construction Standards, or any amendments thereto. The Owners shall maintain the Temporary Access Road in a suitable condition until its functionality is replaced by a permanent road to the satisfaction of Subdivision and Development Coordination;

(d) ensure that the total unobstructed distance from the principal entrance of each Showhome is not more than ninety (90) metres from a fire hydrant that is connected to a water system that has been commissioned and is operational to the satisfaction of EPCOR Water Services Inc., or such other distance as approved by Fire Rescue Services; and

(e) have a sign erected on the Proposed Lots on which the Showhomes are to be located, exterior to the Showhomes, for the purpose of advising members of the general public that the Showhomes are not for sale and cannot be occupied until servicing of the Development Lands is completed and occupancy permits obtained. The words on the signage shall be as follows:

*"The Showhomes have been permitted for the sole purpose of marketing homes in this proposed subdivision. Please be advised that these Showhomes 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 **"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 Planner.

2.3 The Owners acknowledge that the City of Edmonton will not issue any permits for the Showhomes until there is an operational water system and a suitable Temporary Access Road in accordance with Articles 2.2(c) and 2.2(d).

2.4 The Owners agree that they shall maintain the sign in accordance with Article 2.2(e) until the Showhomes are no longer considered Showhomes in accordance with this Agreement.

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

2.6 The Owners promise and agree:

- (a) to ensure that the Showhomes are constructed on the Proposed Lots in such a manner that the Showhomes will comply with all development requirements of "single family detached houses" in a "RSL Zone" as set out in the City of Edmonton Zoning Bylaw;
- (b) that prior to opening the Showhomes 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 Showhomes shall not be occupied for residential purposes until the Showhomes are no longer considered to be Showhomes in accordance with this Agreement.

2.7 The Owners agree that they shall remove the Showhomes from the Proposed Lots, fill in any excavations and return the Development Lands to substantially the same condition it was in prior to the commencement of excavation for the construction of the Showhomes, 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 within one (1) year of the date of this Agreement; or
- (b) The Owners fail to register a Plan of Survey for the Development 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 Development Lands and creation of the Proposed Lots in accordance with Subdivision Authority Approval, the Showhomes fail to meet the development requirements of "single family detached houses" in a "RSL Zone" as set out in the City of Edmonton Zoning Bylaw; or
- (d) The Owners fail to provide and maintain the Security in accordance with this Agreement.

2.8 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 required 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 within this Agreement shall be assumed to be in compliance with the requirements of such statutes, bylaws or regulations.

2.9 The Owners shall within two (2) weeks of commencement of construction of the basement for each of the Showhomes provide to the Deputy City Manager of the Urban Planning and Economy Department or his designate, a Real Property Report for each of the Showhomes showing the location of the foundation walls.

2.10 The Owners and the City agree that the Showhomes are no longer considered Showhomes in accordance with Article 4. Thereafter the use of buildings or structures shall no longer be governed by this Agreement.

2.11 The Owners, in proceeding with and effecting work on or in respect of the Development Lands or the Showhomes, 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 within this Agreement or any actions or steps taken by the City under this Agreement 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 Survey.

2.12 If the Residential Servicing Agreement is not entered into between the City and the Owners, or the Owners fail to register the Plan of Survey of the Development 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.

2.13 The Owners acknowledge that nothing within this Agreement shall be interpreted to allow the Owners 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.

2.14 The Owners acknowledge that they remain liable for payment of drainage assessments 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.

2.15 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 agree:

- (a) to indemnify and save harmless the City, its servants, agents, contractors, 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 and in contract, or either, out of the performance or non performance by the Owners of their obligations under this Agreement; and

(b) to 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 have for or by reason of anything whatsoever arising out of or connected in any way with the exercise by the Owners of their obligations under this Agreement.

2.16 The Owners acknowledge that their obligations under this Agreement shall not 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 3 SECURITY

3.1 To ensure compliance with this Agreement, the Owners shall provide irrevocable and unconditional Security to the satisfaction of the City, in the amount set out in Article 1.1(b). The Security must be kept in good standing until it is released in accordance with Article 4.

3.2 Letter of Credit

If the Owners provide the Security in the form of a letter of credit, then the letter of credit, and any amendments or renewals to the letter of credit (the "Letter of Credit"), shall:

- (a) be issued by a Canadian financial institution, a local bank, local credit union, or local treasury branch, and be in its original form with the original authorized signatures;
- (b) be stated in Canadian dollars (numeric and text);
- (c) be unconditional, irrevocable, and payable at sight;
- (d) be for an initial term of at least one (1) year;
- (e) include an automatic renewal clause where the expiry date is extended for a further one (1) year term, without amendment, unless sixty (60) days notice is given by the bank in writing, and delivered by registered mail to the beneficiary's address;
- (f) expire on a weekday which is not a statutory holiday;
- (g) provide that partial draws are permitted;
- (h) make reference to the development name and agreement number assigned to this Agreement, as stated on the front page of this Agreement;
- (i) state the beneficiary's name and address as follows:

The City of Edmonton
Urban Planning and Economy

2nd Floor, 10111 – 104 Avenue NW
Edmonton, AB T5J 0J4
Attention: Angie Neal-Anshelm

- (j) be delivered to the above noted beneficiary as many times as is necessary until the Letter of Credit is released in accordance with Article 4; and
- (k) state that it is to be available as security for any and all obligations whatsoever of the Owners under this Agreement.

3.3 Cash Security

If the Owners provide the Security in the form of cash (the “Cash Security”), the City shall hold the Cash Security in an interest bearing account, with interest accruing at the City of Edmonton Short Term Investment Weighted Average Rate less one and one half percent (1.5%). If the City of Edmonton Short Term Investment Weighted Average Rate less one and one half percent (1.5%) is a negative sum for any period of time, then no interest will accrue on the Cash Security for that period.

3.4 Reasons to Draw on Security

The City, at its sole discretion, may draw on the Security if:

- (a) the Security is provided by way of Letter of Credit, and the Letter of Credit is not renewed to the satisfaction of the City in accordance with Article 3.2;
- (b) in the opinion of the City, the Owners or their employees, contractors or agents create an unsafe condition, in which case the City may use the Security to do any work required to protect life and property from injury or destruction; and
- (c) the Owners default on any of their obligations under this Agreement, including the obligation to return the Development Lands to the condition it was in prior to the commencement of the construction of the Showhomes in accordance with Article 2.7, in which case the City may use the Security to rectify any default.

3.5 Use of the Security

If the City draws on the Security, the proceeds may be used to pay:

- (a) the reasonable costs incurred by the City when drawing on the Security including, but not limited to, transportation and actual out of pocket expenses;
- (b) all costs incurred by the City in completing any work required to maintain, repair, remove, restore, or rectify any deficiencies in the work undertaken by the Owners, including, but not limited to:
 - (i) administrative costs incurred when arranging to complete the work;
 - (ii) consulting and contracting fees required to retain outside consultants and

contractors; and

(iii) costs related to labour, materials, testing, and inspection;

(c) all costs incurred by the City in rectifying any default by the Owners under this Agreement.

If the City draws on the Security, the City agrees to provide an accounting to the Owners indicating how the proceeds of the Security were used within sixty (60) days of rectifying any default. The City shall pay the Owners any surplus funds not required to rectify any defaults within sixty (60) days after completion of work required to return the Development Lands to the condition it was prior to the commencement of construction of the Showhomes, including the removal of all buildings constructed on the Development Lands. No interest will be paid on any surplus funds.

3.6 Insufficient Security

If the proceeds of the Security are not sufficient to cover the items listed in Article 3.5, the Owners agree to pay any shortfall to the City within thirty (30) days of being invoiced.

ARTICLE 4 TERMINATION

4.1 The City and the Owners agree that this Agreement shall terminate upon a Residential Servicing Agreement being executed and the Plan of Survey being registered creating the lots upon which the Showhomes are located, or upon removal of the Showhomes and the return of the Development Lands to substantially the same condition it was in prior to commencement of construction of the Showhomes in accordance with Article 2.7, whichever first occurs.

ARTICLE 5 NOTICE

5.1 The word "notice" in this Article 5 includes any notices, requests, demands, applications, information, statements, or other communication required or permitted to be given by either party to the other.

5.2 Each party shall sufficiently give any notice under this Agreement in writing as follows:

(a) In case of notice to the City, sent by prepaid registered mail or personally delivered in an envelope addressed to:

General Supervisor, Development Servicing Agreements
Urban Planning and Economy
2nd Floor, 10111 – 104 Avenue NW
Edmonton, AB T5J 0J4

(b) In case of notice to the Owners, sent by prepaid registered mail or personally delivered in an envelope addressed to:

"Developer Name"
"Developer Address"
"Developer Address"

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

"Consultant Name"
"Consultant Address"
"Consultant Address"

or

(c) To any other address as any party may specify from time to time in writing to the other party.

5.3 Notice, if posted in Alberta not during a postal disruption, shall be considered to have been given on the fifth (5th) business day following the date on which the notice is mailed. Notice during a postal disruption must be personally delivered. Any notice delivered in person shall be considered to have been given on the date of actual delivery.

ARTICLE 6 ACCESS

6.1 The Owners consent and agree to allow the City, at all times, access on the Temporary Access Road, for the purposes of emergency response, until such time as the Temporary Access Road is unnecessary due to the construction of a permanent road. The Owners further agree to obtain such consent for emergency access from any subsequent purchaser.

6.2 The Owners consent and agree to allow EPCOR Water Services Inc., entry to the Temporary Access Road and Development Lands for the purpose of operating and maintaining the water system when required.

ARTICLE 7 GENERAL

7.1 Indemnification

The Owners agree to indemnify and save harmless the City, its servants, agents, contractors, 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 and in contract, or either, out of the performance or non performance by the Owners of their obligations under this Agreement, except any claims which are caused by the wilful misconduct or negligence of the City, its officers or employees. The Owners are also responsible, and agree to indemnify the City, for any costs and expenses incurred as a result of any claim under this Article 7.1, including solicitor-client costs.

7.2 Assignment of this Agreement

This Agreement cannot be assigned unless:

- (a) the City provides consent for the assignment, and the assignment is executed between the Parties and the assignee in writing; and
- (b) the assignee has provided replacement Security as required under this Agreement, to the satisfaction of the City.

7.3 Amendments to this Agreement

This Agreement cannot be modified or amended except by an instrument in writing signed by the Parties.

7.4 Joint and Several Liability

If this Agreement is executed by more than one (1) party as the Owners, the liabilities related to all covenants, conditions, obligations and liabilities contained in this Agreement are joint and several against all executing Owners.

7.5 Other Acts and Regulations

- (a) This Agreement does not nullify, replace, circumvent, extend or modify any existing statutes, bylaws, permit conditions, or other regulations which govern development or construction within the City of Edmonton.
- (b) Furthermore, the Owners *shall* ensure that the provisions of the following Acts and their Regulations are being followed by all contractors, subcontractors, employees, consultants, and agents:
 - (i) *Occupational Health and Safety Act* RSA 2000, Chapter O-2, as amended and its Regulations;
 - (ii) *Environmental Protection and Enhancement Act* RSA 2000, Chapter E-12, as amended and its Regulations;
 - (iii) *Fisheries Act* RSC 1985, Chapter F-14, as amended and its Regulations;
 - (iv) *Navigable Waters Protection Act* RSC 1985, Chapter N-22, as amended and its Regulations;
 - (v) *Water Act* RSA 2000, Chapter W-3, as amended and its Regulations; and
 - (vi) any other applicable Acts.

7.6 Additional Obligations

The City does not represent or warrant that the obligations of the Owners under this Agreement are the only obligations related to access or servicing of the Development Lands. The City reserves the right to attach any other lawful conditions relating to servicing or access to the Development Lands as a condition of any future approval relating to the Development Lands, including, but not limited to, the right to impose

an off-site levy under s. 648 of the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended.

7.7 Registration on Title

The City is entitled to register a caveat under the *Land Titles Act*, RSA 2000, Chapter L-4, as amended, in respect of this Agreement against the Certificates of Title for the Development Lands. The caveat may be registered for purposes of providing notice of the responsibilities of the Parties under this Agreement. If requested by the Owners in writing, the City agrees to postpone this caveat in favour of financing related to the Development Lands. Upon compliance by the Owners with all terms of this Agreement, and upon receipt by the City of a written request, the City shall prepare the discharge of the caveat.

7.8 Other General Provisions

- (a) Whenever the singular, gender-neutral, or masculine is used in this Agreement, it will be construed as meaning the plural, feminine, or body corporate, where the context so requires.
- (b) The Parties covenant and agree to perform tasks, to issue instructions, and to execute further documents, agreements and assurances as may be necessary from time to time in order to carry out the terms of this Agreement in accordance with their true intent.
- (c) Whenever any thing or matter is to be done to the approval of, satisfactory to, acceptable to or is subject to similar determination to or by the City or its employees or officers, the City shall act reasonably and in a timely manner.
- (d) If any of the Parties condones, forgives, waives, accepts, allows, or disregards any non-observance or non-performance by any other party of any provisions of this Agreement, such shall not operate as a waiver or acceptance in respect of any provision or any subsequent non-observance or non-performance by any party of any of the provisions of this Agreement.
- (e) If one or more articles of this Agreement are declared invalid or unenforceable by a court, the article or articles will be severable from the remainder of this Agreement, and the other provisions in this Agreement remain in full force and effect.
- (f) The Owners covenant and agree that they will obtain the same covenants in this Agreement, including this covenant, from any person to whom they may, in any way, convey the fee simple estate of all or any portion of the Development Lands, prior to registration of the plan of subdivision for the Development Lands, so that the covenants will be enforceable by the City.
- (g) This Agreement shall inure to the benefit of and be binding upon the Parties, their heirs, successors and approved assigns.
- (h) The Parties agree that this written instrument contains all terms agreed to between the Parties with regard to the matters in this Agreement, and that no other understandings or agreements exist between the Parties, verbal or otherwise. The Parties further agree that the background section and all schedules form an integral part of this Agreement.

(i) The validity and interpretation of this Agreement, and of each article and part within this Agreement, will be governed by the laws of the Province of Alberta.

The Parties execute this Agreement by the hands of their authorized officers as of the date first written above.

THE CITY OF EDMONTON
(As represented by the General Supervisor,
Development Servicing Agreements)

GENERAL SUPERVISOR

Approved:

Template legally reviewed
and approved to form by
Office of the City Manager, Legal Services

As to contents _____
Urban Planning and Economy,
Development Servicing Agreements

"DEVELOPER NAME"

PER: _____

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

SCHEDULE "A"
LAND TITLE CERTIFICATES

SCHEDULE "B"
THE DEVELOPMENT LANDS

In this Agreement, the following terms will have the meanings set out below:

- (a) **City**, for the purposes of this Agreement, means the City of Edmonton, a Municipal Corporation, and includes all City Departments, EPCOR Water Services Inc., EPCOR Distribution and Transmission Inc., or Drainage Services, EPCOR Utilities Inc., where applicable.
- (b) **Development Lands** means those lands within the City of Edmonton which the Owners intend to develop or subdivide in relation to the Residential Servicing Agreement, and which are shown on Schedule "B".
- (c) **Development Planner** means those City employees within Urban Planning and Economy who are authorized to issue development permits.
- (d) **General Supervisor, Development Servicing Agreements** means the City employee appointed to the position of General Supervisor, Development Servicing Agreements, Urban Planning and Economy of the City, or the individual authorized to act in his or her place for the purpose of administering this Agreement.
- (e) **GST** means the Goods and Services Tax as assessed, charged and levied by the Government of Canada. The City's GST registrant's number is R119326270.
- (f) **Parties** collectively means both the City and the Owners.
- (g) **Plan of Survey** means the legal plan showing the area and dimensions of the Proposed Lots of the Development Lands.
- (h) **Proposed Lots** means the lots as approved by the Subdivision Authority Approval to be created from the Development Lands.
- (i) **Real Property Report** means a legal document that is prepared and signed by a certified Alberta land surveyor that shows the structures and improvements on a parcel of land relative to the property lines.
- (j) **Residential Servicing Agreement** means a residential servicing agreement to be entered into between the Owners and the City for the provision of orderly servicing of the Development Lands, including the installation and construction by the Owners of certain municipal improvements required as a condition of the Subdivision Authority Approval.
- (k) **Security** means an irrevocable letter of credit or cash in lieu of a letter of credit, provided by the Owners that will be used to secure their obligations in this Agreement.
- (l) **Senior Development Engineer** means the City employee within Urban Planning and Economy that is authorized to administer the terms of this Agreement on behalf of the City.
- (m) **Showhomes** means 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.

(n) **Showhome Agreement Fee** means a charge per Agreement which will be used for the administration and drafting of this Agreement.

(o) **Standards** means the City of Edmonton's Design and Construction Standards which contain specifications and standards by which infrastructure is designed and constructed as a condition of subdivision or development of land within the City.

(p) **Subdivision Authority** means those employees of the City that are authorized to approve subdivision applications.

(q) **Subdivision Authority Approval** means the Subdivision Authority approval of the subdivision of the Development Lands.

(r) **Temporary Access Road** means an all-weather access road to provide vehicular access to the Showhomes, including emergency vehicles. It shall be constructed with a 6.0 metre wide surface with 200 mm of 3-20A crushed gravel and a 150 mm cement stabilized subgrade, or other width and/or structure approved by Transportation Services, at its sole discretion.

-- END OF SCHEDULE "C" --