

**IN THE MATTER OF
THE FAIR TRADING ACT**

THIS UNDERTAKING is made pursuant to Section 152 of the *Fair Trading Act*.

BY:

**AKAL HOMES LTD. &
RTM DREAM HOMES LTD.**

**BOX 10220, STATION M,
AIRDRIE, ALBERTA, T4A 1L1**

(hereinafter called the "**Supplier**")

TO:

The **DIRECTOR OF FAIR TRADING** (as delegated),

(hereinafter called the "**Director**")

WHEREAS:

- (A) The Supplier entered into a contract for the construction of a new home with a consumer who resides in the City of Calgary in the Province of Alberta.
- (B) The Supplier acknowledges that it entered into a prepaid contract with (the "consumer"), both of whom are residents of Alberta. The contract was concluded on February 19, 2013 at the Supplier's place of business. The Supplier accepted deposits from the consumer in the respective amounts of \$25,000 and \$100,000 (totaling \$125,000) by way of cheque dated respectively, February 19, 2013 and February 28, 2013.
- (C) The Supplier acknowledges that, although it was then in the process of transition from coverage by another home warranty provider to becoming a member of the single family residential warranty program administered by Progressive Home Warranty Program, it was not a member on February 19, 2013 and it did not actually become a builder member of the Progressive Home Warranty Program until March 18, 2013; it carelessly failed to accurately reflect that fact in its standard form of contract. The Supplier also acknowledges that, by failing to accurately advise the consumer of its current status with the Progressive Home Warranty Program, it also failed to exercise a reasonable standard of due diligence and that it did thereby mislead or deceive the consumer contrary to section 6(4)(a) of the *Fair Trading Act*.
- (D) The supplier acknowledges the receipt of a cancellation letter dated August 29, 2014 from the consumer in which the consumer indicated that it was cancelling the contract and demanded that the deposit of \$125,000 be returned to the consumer with 15 days. The Supplier, on September 22, 2014 made a refund in the amount of \$115,000.00 (which amounts to the aggregate deposit \$125,000.00 minus goods and services provided to the consumer by AKAL HOMES LTD.) to the consumer.
- (E) The Director asserts that he has reason to believe that the acts or practices of the supplier described in recital (C) constitutes a breach of section 6(4)(a) of the *Fair Trading Act*.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it has failed to comply with Section 6(4)(a) of the *Fair Trading Act* and undertakes to the Director that this Supplier will not, at any time hereafter, engage in acts or practices similar to those described in recitals (C).
2. The Supplier will ensure in all capacities, either in his name, a trade name, corporation or a partnership or in his capacities as an employee, declarants of the trade names, directors, shareholders of a corporation or as agents for another, or parents or subsidiaries of another corporation, they will not take deposits or progress payments on construction or maintenance contracts in Alberta unless at least one of the following conditions exists or is in place:
 - a. It is licensed as a prepaid contracting business under the *Fair Trading Act*; or
 - b. The contract is solicited, negotiated, and concluded at the Supplier's place of business as contemplated by s. 5(2)(c) of the *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999; or
 - c. The contract is covered by the Alberta New Home Warranty Program as contemplated by s. 5(3)(c) of the *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999.
3. The Supplier will not permit any representative, employee, agent, or partner to carry on or engage in the taking of deposits or progress payments on the construction or maintenance contract in Alberta unless at least one of the following conditions exists or is in place:
 - a. It is licensed as a prepaid contracting business under the *Fair Trading Act*; or
 - b. The contract is solicited, negotiated, and concluded at the Suppliers place of business as contemplated by s. 5(2)(c) of the *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999; or
 - c. The contract is covered by the Alberta New Home Warranty Program as contemplated by s. 5(3)(c) of the *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999.
4. The Supplier will, to the best of its ability, ensure that all of its officers, partners, employees, representatives, and agents are forthwith acquainted with the requirements of the *Fair Trading Act*, especially as it pertains to prepaid contract business licensing and contract requirements and unfair practices.
5. It is understood that the Supplier has:
 - a. Ceased taking deposits or progress payments on prepaid construction, renovation, or maintenance contracts from Albertans prior to completing the work, and will continue to refrain from doing so, unless at least one of the conditions identified in paragraph 2 (a), (b), and (c) hereof exists or is in place;
 - b. Instructed his representatives, employees, or partners not take deposits or progress payments on prepaid construction, renovation, or

maintenance contracts from Albertans prior to completing the work, and will continue to refrain from doing so, unless at least one of the conditions identified in paragraph 2 (a), (b), and (c) hereof exists or is in place;

- c. Acquainted themselves and any of their representatives, employees, or partners regarding the prepaid contracting business licensing and contract requirements and unfair practices outlined in the *Fair Trading Act*.
 - d. has provided a refund in the amount of \$115,000.00 to the consumer, which amounts to the aggregate deposit of \$125,000.00 minus goods and or services provided to the consumer by AKAL HOMES LTD.
 - e. On June 24, 2013, the consumer had expressed appreciation for "the help and support" that AKAL had provided to the consumer. The consumer demanded return of the deposit on August 29, 2014. The refund was provided to the consumer on September 22, 2014. AKAL kept Service Alberta apprised of circumstances pertaining to its return of the refund to the consumer. Some of the delay was attributable to AKAL's concern that it was in the best interests of all parties to the contract that the consumer be represented by independent counsel, an option which the consumer elected not to pursue.
6. This Undertaking will be binding upon the Supplier and its successors and assigns unless:
- a. Terminated by the Director or varied with the consent of the Supplier;
 - b. Varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant carrying the provisions of the Undertaking; or
 - c. Terminated by an Order of a Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair;

However, in any such case, the termination or variance does not invalidate anything under this Undertaking prior to termination or variance.

7. The Supplier will pay to the Director for deposit to the 'Provincial Treasurer of Alberta', the sum of \$4,600.00; an amount that represents a portion of the costs associated with investigating this matter. Such payment is to be made within 10 days from the date of this Undertaking.
8. The Supplier acknowledges that the Director may, upon breach by the Supplier of any term of the Undertaking, institute such proceedings and take such action under the *Fair Trading Act* as he may consider necessary.
9. The Supplier acknowledges that it was advised by Service Alberta, and is aware that it is entitled to seek independent professional advice regarding the signing of the Undertaking, and the Supplier acknowledges that it is entering into the Undertaking voluntarily.
10. It is understood that the terms of this Undertaking shall be maintained as a public record pursuant to Section 157.1(1) of the *Fair Trading Act*.

IN WITNESS WHEREOF the Supplier, has on the 3rd day of Mar., 2015
caused it common seal to hereunto affixed and attested by the signatures of its proper
officers duly authorized in that behalf.

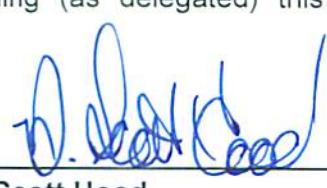
AKAL HOMES LTD. &
RTM DREAM HOMES LTD.

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AIRDRIE, ALBERTA, T4A 1L1

PER: _____


Jaswinder S. Sra

ACCEPTED by the Director of Fair Trading (as delegated) this 17th day of
March, 2015



Scott Hood
DIRECTOR OF FAIR TRADING
(as delegated)