

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

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942076522

ADVISORY

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ENCU - ENCUMBRANCE
POC 13 OF 15 DRR#: 4122217 ADR/GMUMMIRT

ENCU. (13)

BLACKBURNE CREEK
OPERATING ENCUMBRANCE

BIAMONTE CAIRO & SHORTREED
1600 ROYAL TRUST TOWER
10205 101 STREET
EDMONTON ALBERTA
T5J 2Z2
FILE 21,491 ASC

BLACKBURNE CREEK

OPERATING ENCUMBRANCE

TO SECURE MONTHLY RENT CHARGE OF UP TO \$25.00 PER LOT.

PURSUANT TO "THE LAND TITLES ACT"

BLACKBURN CREEK DEVELOPMENT CORPORATION c/o 1600, Royal Trust Tower, 10205 - 101 Street, Edmonton, Alberta, T5J 2Z2, as Encumbrancer (hereinafter called "the Developer") being registered owner or entitled to become registered owner of an estate in fee simple in possession, subject however, to such encumbrances, liens and interests as are notified by memorandum endorsed hereon or expressed or implied in the existing certificate of title of that piece of land situated in the Province of Alberta and Dominion of Canada being composed of :

LEGAL DESCRIPTION

PLAN	BLOCK	LOT
942 942-0780	4	75
	4	59 to 71 inclusive
	6	14 to 19 inclusive
	6	47 to 54 inclusive

(hereinafter called the "Lands" or the "Lots")

EXCEPTING and RESERVING such exceptions and reservations as are expressed in the existing certificate of title or may be implied in connection therewith, and desiring to render the Lands available for the purpose of securing to and for the benefit of the Blackburne Creek Homeowners Association Ltd. c/o 1600, Royal Trust Tower, 10205 - 101 Street, Edmonton, Alberta, T5J 2Z2, as

Encumbrancee (hereinafter called the "Encumbrancee") the Rent Charge hereinafter mentioned, DO HEREBY ENCUMBER said Lands for the benefit of the Encumbrancee in lawful money of Canada as to the specific sums, as may be determined by the Blackburne Creek Homeowners Association Ltd. from time to time, but in any event not to exceed the sums as specified as follows for each specific parcel to which this encumbrance applies, namely:

PLAN	BLOCK	LOT	
942-0780 933	4	75	\$15.00 per lot/month
	4	59 to 71 inclusive	\$25.00 per lot/month
	6	14 to 19 inclusive	\$25.00 per lot/month
	6	47 to 54 inclusive	\$25.00 per lot/month

The amounts as shall be determined from time to time by the Blackburne Creek Homeowners Association Ltd. and in any event no greater amount than as aforesaid shall be paid for each month, each year, to the Encumbrancee in lawful money of Canada, at the Encumbrancee's office at 10366 172 Street, Edmonton, Alberta (or alternatively such other address as the Encumbrancee may from time to time designate in writing), commencing upon the sale of 75% of the Lots in the Subdivision by the Developer.

Upon the commencement date as aforesaid any Lands which are registered in the name of the Developer shall be exempt from payment of charges hereunder for such times as the Lands remain registered in the name of the Developer.

FOR THE PURPOSES of the provisions hereof the terms defined shall have the meanings herein specified. The terms:

- (a) "Common Lands and Amenities" shall mean those amenities constructed or developed by or for the Encumbrancee including, all exterior grounds including but not limited to grassed areas, inclusive of boulevards, parks and utility right of ways, flower gardens, shrub and tree areas, fences, recreational areas, buildings and facilities, entrance structures and treatments;
- (b) "Encumbrancee" shall mean, in the first instance, Blackburne Creek Homeowners Association Ltd., and their successors;
- (c) "Mortgagee" shall mean lender or lenders granting a mortgage on the security of any of the Lands;
- (d) "Rent Charges" or "Monthly Rent Charge" shall mean the maximum amount specified herein for the period herein described, or such lesser amount as determined by the Encumbrancee.
- (e) "Owner" shall mean the registered owner or person entitled to become the registered owner of Lands in fee simple affected herein, or alternatively in the instance of Condominium Units located on the Lands the registered owner of the individual Condominium Units, registered pursuant to a Condominium Plan at the North Alberta Land Registration District.
- (f) "Subdivision" shall mean those land as described in Schedule "A" attached and annexed hereto.

And in consideration of the Owner's covenants hereinafter set out the Encumbrancee DO TH HEREBY COVENANT AND AGREE with the Owner and with any Mortgagee hereinafter mentioned;

- (a) That this encumbrance and rent charge secured hereby are subject to the matters set out in (b) below, and are subordinate to and are hereby postponed to any first specific mortgage charge granted to a bona fide Mortgagee

in respect of such Lands, whenever and however granted, and to each and every advance made thereunder so that such mortgage will take precedence and priority in all respects as to principal, interest, rights and remedies.

- (b) As a condition precedent to the operation of the postponement referred to in Clause (a) immediately preceding, a Mortgagee shall deliver or cause to be delivered to the Encumbrancee at the address of 10366 172 Street, Edmonton, Alberta, (or at such other address as the Encumbrancee may designate in writing from time to time) a postponement agreement, in satisfactory form to the Encumbrancee and which shall contain clauses similar to clauses (i) and (ii) immediately hereafter.
- (i) In the event that the Mortgagee shall, for any reason whatsoever succeed to the interest of the Owner or its successors in title in any of the Lands, the right and benefit of the Encumbrancee under this Encumbrance shall not be diminished by reason thereof and further the Mortgagee shall be bound to the Encumbrancee under all terms, covenants and conditions of this Encumbrance, save and except for liability for due and unpaid rent charges accrued prior to the Mortgagee succeeding in title the Owner or its successors, and the Encumbrancee shall from and after such event have the same remedies against the Mortgagee for any breach on the part of the Mortgagee occurring from and after such event, that the Encumbrancee might have had against the Owner if the Mortgagee had not succeeded to the interest of the Owner;
- (ii) If the interest of the Owner in the Lands under the mortgage shall be transferred to the Mortgagee or other subsequent Transferee by reason of foreclosure or other proceedings for enforcement of the mortgage, the Mortgagee or Transferee shall be bound to the Encumbrancee, notwithstanding the delivery of the postponement, under all terms, covenants and conditions of the Encumbrance, with the same force and effect as if

the Mortgagee or Transferee were the Owner named in the Encumbrance and the Mortgagee or Transferee does hereby attorn to the Encumbrancee, said attornment to be effective and self operative without the execution of any further instruments upon the Mortgagee or Transferee succeeding to the interests of the Owner in the Lands. Upon transfer to the Mortgagee or Transferee under a foreclosure proceeding, as aforesaid, the Mortgagee or Transferee shall not cause the Encumbrance to be discharged from the title of the Lands.

AND THE OWNER DOTH HEREBY COVENANT, ACKNOWLEDGE AND AGREE THAT:

1. The true consideration for the granting of this Encumbrance and for the covenant to pay the Rent Charge hereby secured is the payment of ONE (1) DOLLAR and other good and valuable consideration by the Encumbrancee to the Owner (the receipt of which is hereby acknowledged), and the construction and maintenance of the Common Lands and Amenities developed by the Developer for the benefit of, inter alia, the Owner; and
2. The Owner shall pay said Rent Charge to the Encumbrancee at the time and place hereinbefore set forth without deduction or defalcation; and any amount in default shall bear interest at the rate of 18% per annum, calculated semi annually and not in advance, and payment of said Rent Charge and such interest shall be secured by these presents; and
3. The Encumbrancee, shall be entitled to and are hereby granted the right of distress together with all powers and remedies of a mortgage under the Land Titles Act; and
4. For the purpose of realizing the security granted by the Owner to the Encumbrancee, the Encumbrancee shall be deemed to be a Mortgagee enjoying all the rights and privileges of a Mortgagee as provided under the laws of the Province of Alberta and the Encumbrancee shall be entitled, without restricting the generality hereof, to take any proceedings for sale or for foreclosure,

actionable in equity or in law; and

5. In case of default being made by the Owner in any of the covenants, agreements, provisions and stipulations herein contained, and by reason of such default the Encumbrancee considers it necessary to place this Encumbrance in the hands of its solicitors for the purpose of having such default remedied, then the Owner covenants and agrees with the Encumbrancee to pay the full cost of said solicitors as between solicitor and client; and

6. This Encumbrance shall be construed and governed by the laws of the Province of Alberta; and

7. The waiver of any one or more defaults under this Encumbrance shall not be construed as a waiver of any subsequent of other default; and

8. The Encumbrancee may register this Encumbrance against the title to the Lands in the Land Titles Office for the North Alberta Land Registration District; and

9. Any notice to be given by the Encumbrancee to the Owner may be forwarded by ordinary mail addressed to the Owner at the municipal address of said Lands or to the last post office address of the Owner known to the Encumbrancee, and shall be deemed to have been received by the Owner within the ordinary time required for delivery of mail from the post office where mailed, to such address; and

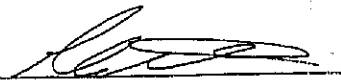
10. The words in the hereinbefore contained covenants, provisos, conditions and agreements referring to the Owner which import the singular number shall be read and construed as applied to each and every Owner male and female and to his or her executors, administrators and assigns, and in the case of a corporation, to such corporation and its successors and assigns, and that in case of more than one Owner; and said covenants, provisos, conditions and agreements shall be construed and held to be several as well as joint; and

11. These covenants shall enure to the benefit of the

Encumbrancee's successors and assigns and shall be binding upon the Owner's executors, administrators, assigns and successors in title.

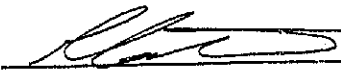
IN WITNESS WHEREOF the Encumbrancer and Encumbrancee have subscribed, affixed their seals and delivered these presents this 15th day of ~~October~~, 1993.
November

BLACKBURN CREEK DEVELOPMENT CORPORATION

PER: 

PER: _____

BLACKBURNE CREEK HOMEOWNERS ASSOCIATION LTD.

PER: 

PER: _____

SCHEDULE "A"

Firstly

All that portion of the south east quarter of section twenty nine (29), township fifty one (51), range twenty four (24), west of the fourth (4) meridian. Which lies west of the westerly limit of the road, as shown on road plan 4795EU and north of the land subdivided under plan 2817MC and the production easterly of the north boundary of lot (C) as shown on the said plan 2817MC, containing 33.6 hectares (83 acres) more or less.

Excepting thereout 0.450 hectares (1.10 acres) more or less as shown on road plan 814PX

Excepting thereout all mines and minerals.

Secondly

Plan 5743MC
Parcel (A)
Containing 26.3 hectares (65 acres) more or less.

Excepting Thereout 1.62 hectares (4 acres) more or less, subdivided under plan 7822404.

Excepting thereout all mines and minerals.