

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

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ADVISORY

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OUR FILE:

YOUR FILE:

June 19, 2015

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Land Titles Office
 Edmonton, Alberta

Attention: Lisa Gyselink

Dear Madam:

RE The Hills at Charlesworth Homeowners Association

Further to your correspondence with Kyle Sahuri at Stantec, the address for The Hills at Charlesworth Homeowners Association is 17515- 108 Avenue, Edmonton, Alberta, T5S 1G2 until such time as the Home Owners Association may designate in writing.

Yours truly,

Biamonte Cairo & Shortreed

Per:

BENJAMIN C. CAIRO

st

ENCUMBRANCE AGREEMENT

MADE AS OF THIS 8th day of June, 2015

BETWEEN:

BEAVERBROOK CHARLESWORTH LTD., ✓
a body corporate incorporated under the laws of the Province of Alberta
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

THE HILLS AT CHARLESWORTH HOMEOWNERS ASSOCIATION,
a society incorporated under the *Societies Act* of Alberta
(hereinafter called the "Homeowners Association")

OF THE SECOND PART

WHEREAS:

- a. The Developer is registered as owner of lands in the City of Edmonton, in the Province of Alberta described in Schedule "A" hereto (each lot set out in Schedule "A" being hereinafter referred to as a "Subdivided Lot");
- b. The Subdivided Lots are part of a planned development in stages of lands that are herein described as the "The Hills at Charlesworth Subdivision" and may include future subdivisions from the lands described in Schedule "B" hereto (the "Lands") or additional lands which the Developer may in the future be developed as part of The Hills at Charlesworth Subdivision;
- c. The Developer wishes to develop on The Hills at Charlesworth Subdivision a residential development, special aspects of which are to be the sharing of maintenance of Subdivision Features by and through the Homeowners Association; and
- d. The Homeowners Association is (and will hereby become) the holder of restrictive covenants, leases, easements and other rights in, to and over portions of the Subdivided Lots within The Hills at Charlesworth Subdivision.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. DEFINITIONS

IN THIS INSTRUMENT the following items have the following meanings:

- a. "**Adjustment Amount**" means in respect of each calendar year after 2015, that sum of money equal to the product obtained by multiplying the amount payable in paragraph 2(b)(i) for a Multi Family Lot, Single Family Lot and/or Unit, respectively, plus the cumulative total of all prior years' Adjustment Amounts (if any) by the percentage increase (if any) in the "all items" consumer price index (or equivalent from time to time) for the City of Edmonton as issued by Statistics Canada, for the year over the previous year. There shall be no adjustment for any decrease from time to time in such index. For greater certainty, the intent of the Adjustment Amount is to reflect the cumulative

and compounded increase in the consumer price index as aforesaid, year by year, commencing January 1, 2016;

- b. **"Homeowners Association's Costs"** means for any period shall mean any and all costs incurred or to be incurred in such period (including without limitation reasonable reserves for future maintenance, repair and replacement costs of the Subdivision Features) by the Homeowners Association for and in respect of carrying out and exercising its rights, duties and obligations, as determined by the Board of Directors of the Homeowners Association from time to time.
- c. **"Multi Family Lot"** means a parcel or parcels of land within The Hills at Charlesworth Subdivision that are now or in the future developed as multi family housing properties but are not condominium units created as a result of registration of a condominium plan;
- d. **"Owner"** means the registered owner in fee simple of a Subdivided Lot and/or Unit;
- e. **"The Hills at Charlesworth Subdivision"** means lands subdivided from the lands described in Schedule "B" hereto and includes the Subdivided Lots and/or Units, and such other subdivided lots and/or Units as may hereafter become subdivided from the Lands and additional lands which are adjacent or near the Lands, if any, and which form part of the subdivision known as The Hills at Charlesworth (the extent and boundaries of which shall be determined by the Developer in its sole discretion).
- f. **"Rent Charge"** means the amount due to the Homeowners Association from time to time as determined in accordance with paragraph 2(b) hereof.
- g. **"Rent Charge Proportion"** means for all Subdivided Lots and/or Units a portion of the Homeowners Association Cost allocated to each Subdivided Lot and/or Units and as are determined, set and deemed payable by the Board of Directors of the Homeowners Association, at their sole discretion, on a per annum basis.
- h. **"Subdivision Features"** includes lighted masonry structures, masonry walls, fencing, gates landscaped cul-de-sac islands, walkways, electrical power and lighting features, medians and boulevards, parks, flower beds, plaza, development fencing, entrance features and landscaping, berms and other facilities now or hereafter constructed in The Hills at Charlesworth Subdivision the care or maintenance of which may be undertaken from time to time by the Homeowners Association.
- i. **"Single Family Lot"** means a detached single family residential lot, a semi detached (duplex) residential lot or a fee simple townhouse lot within The Hills at Charlesworth Subdivision;
- j. **"Subdivided Lot"** means the lots legally described in Schedule "A" hereto and includes Single Family Lots and Multi Family Lots.
- k. **"Term"** means the period set out in Section 3 hereof.
- l. **"Units"** means the condominium units, if any, created as a result of registration of a condominium plan with respect to a portion of the Lands or Subdivided Lot and "Unit" shall mean one of the Units.

2. **COVENANT FOR MAINTENANCE ASSESSMENTS**

- a. There shall be payable to the Homeowners Association from time to time, as assessed and levied by the Homeowners Association from time to time, by the registered owner in fee simple of each Subdivided Lot and/or Unit a sum equal to the amount calculated in accordance with paragraph 2(b) below, as and by way of a Rent Charge.

b. The Developer hereby, as registered owner in fee simple of each of the Subdivided Lots (as described in Schedule "A" hereto) subject to such liens, encumbrances and interests as are endorsed hereon, grants to the Homeowners Association a Rent Charge as against and in respect of each such Subdivided Lot in the amount of:

- i. ONE THOUSAND DOLLARS (\$1000.00) per acre within each Multi Family Lot per annum during the Term, ONE HUNDRED AND FIFTY DOLLARS (\$150.00) for each Single Family Lot per annum during the Term, TWENTY FIVE DOLLARS (\$25.00) for each Unit per annum during the Term plus the Adjustment Amount; and
- ii. the Rent Charge Proportion of the Homeowners Association's Costs applicable to such Multi Family Lot, Single Family Lot and/or Unit, from time to time during the Term hereof determined as herein provided for by the Board of Directors of the Homeowners Association;

and encumbers, mortgages and charges each such Subdivided Lot and/or Unit as security for payment of the Rent Charge applicable to each such Subdivided Lot (respectively) (all of the above collectively referred to as the "Rent Charge").

- c. The Owner from time to time of each Subdivided Lot and/or Unit shall pay the Rent Charge applicable to such Subdivided Lot and/or Unit as and whenever required by the Homeowners Association. The Board of Directors of the Homeowners Association shall from time to time estimate the Homeowners Association's Costs (including without limitation reserves for maintenance, repair and replacement costs) for such period as it deems convenient to its administration and shall notify each Owner of the amount of such estimate and the Owner's share thereof by notice in writing given in accordance with paragraph 4 hereof. Each such estimate shall state the amount of the Rent Charge payable for the period. The Rent Charge for each Subdivided Lot and/or Unit shall be the sum so notified by the Homeowners Association as applicable to the Subdivided Lot and/or Unit and such Rent Charge for such period shall be due and payable on or before the 30th day following notice of the Rent Charge.
- d. The Rent Charge shall be and is hereby made an encumbrance upon each respective Subdivided Lot and/or Unit and the Homeowners Association shall have and be entitled to enforce such Rent Charge against each such (respective) Subdivided Lot in the same manner as provided for an Encumbrance under the *Land Titles Act* of Alberta.
- e. The said Rent Charge shall run with and bind the title to each such respective Subdivided Lot and/or Unit.
- f. Notwithstanding anything herein contained no Rent Charge shall be levied assessed or payable by the Developer for any period prior to the Developer delivering notice to the Homeowners Association in writing (which notice shall be in the discretion of the Developer) that they shall turn over management functions for The Hills at Charlesworth Subdivision to the Homeowners Association;
- g. All Owners shall be subject to all Rent Charges levied on Subdivided Lots owned by them (respectively) from and after the purchase of a Subdivided Lot from the Developer.
- h. No Rent Charges shall be payable in respect of any lands not encumbered with this Agreement or unsubdivided parcels of the Lands owned by the Developer.
- i. The Board of Directors of the Homeowners Association shall (subject to the limitations stated in paragraph 2 hereof) be the sole determiner of the Homeowners Association's Costs, the Rent Charge Proportion, the amount of the Rent Charges from time to time and the dates on which they are payable; and a certificate stating the same and signed by two or more Directors of the Homeowners Association, or signed by an officer of the Developer if the Developer is then a

member of the Homeowners Association, shall be conclusive and binding on all Owners. The Developer shall, for and on behalf of the Homeowners Association, determine the Subdivided Lots that fall within The Hills at Charlesworth Subdivision from time to time.

- j. Notwithstanding the foregoing, the Developer shall have the right in its sole discretion to defer the levy start date to any date after the dates set out in Sections 2(f) and 2(g) respectively.
- k. Any Rent Charge not paid when due shall bear interest (and the Owner of the Subdivided Lot and/or Unit in default shall pay interest on the Rent Charge in default) at the rate of TWELVE (12%) PERCENT per annum from the date due until paid; and such interest shall be and is hereby made a charge upon the said Subdivided Lot and/or Unit. If a Owner shall fail to pay any fees on the day appointed for payment thereof, the Board may at any time thereafter and during such time as the fees are owing by the Owner to the Homeowners Association, serve notice on the Owner requiring him to immediately pay the outstanding fees together with interest and other costs (including solicitor-client costs) incurred by the Homeowners Association by reason of such nonpayment. The Board shall be entitled to register against title to the Subdivided Lot and/or caveat owned by the defaulting Owner an encumbrance, instrument (as defined in the *Land Titles Act* R.S.A. 2000 c. L-4) or caveat with respect to any outstanding monies owed to the Association and shall be entitled to take proceedings and steps in order to collect the outstanding monies owed to the Homeowners Association. Notwithstanding the generality of the foregoing, the lien or charge for outstanding monies owing to the Association and registered by way of caveat against title to the Subdivided Lot and/or Unit shall be deemed to be an equitable mortgage payable upon demand and can be enforced either as a debt or in the same manner as a legal mortgage registered against title to the Subdivided Lot and/or Unit.
- l. The Homeowners Association shall be at liberty, in its sole discretion, to postpone the Rent Charge and Encumbrance herein provided for, in respect of any Subdivided Lot, and/or Mortgage to a registered first mortgage of such Subdivided Lot and/or Unit, on such terms and conditions as the Homeowners Association may require, which may include (without limitation) a requirement for payment of a fee for and expenses incurred (including solicitor-and-his-own-client fees and disbursements) in connection with same, an agreement that in the event the mortgage for any reason succeeds to the interest of the owner to the Subdivided Lot and/or Unit then the right of the Homeowners Association shall not diminish and the mortgagee shall remain bound by this encumbrance and if the interest of an owner in a Subdivided Lot and/or Unit under the mortgage held by the mortgagee shall be transferred to the mortgagee by reason of foreclosure or other proceedings for enforcement of the mortgage, the mortgagee shall be bound to the Homeowners Association, notwithstanding the delivery of a postponement under all the terms, covenants and conditions of this Encumbrance with the same force and effect as if the mortgagee were the owner named in this Encumbrance and the mortgagee does hereby attorn to the Homeowners Association, said attornment to be effective, automatic and self operative without the execution of any further instruments upon the mortgagee succeeding the interests of an owner in the Subdivided Lot and/or Unit. Upon the transfer to the mortgagee, as aforesaid, the mortgagee shall not cause this Encumbrance to be discharged from title to the lands and the Subdivided Lot and/or Unit to which it holds title.

3. **TERM**

This Agreement and the rights, licenses, interests, privileges and charges hereby granted shall be for a term of ONE HUNDRED(100) years commencing on January 1, 2016 and expiring December 31, 2115, with an automatic renewal for the same term unless the Homeowners Association is wound up in accordance with the laws in the Province of Alberta.

4. **NOTICE**

Notices hereunder may be given to an owner of a Subdivided Lot by delivery, email or by prepaid ordinary mail addressed to such Subdivided Lot and/or Unit. Notices to the Association may be given by personal delivery to the registered office of the Homeowners Association or by personal service on a member of the Board of Directors of the Association. Notices to Subdivided Lot and/or Unit owners may be addressed to "Members" or "Occupants" or "Owners" or "Residents" or any similar designation, and do not need to state the Members' names.

5. **MISCELLANEOUS**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. These presents shall enure to the benefit of the Association its successors and assigns and shall be binding upon the Owner and the Owner's assigns and successors in title. If any part of this Agreement shall be void, unlawful or unenforceable for any reason whatsoever, such part shall be severable from this agreement without affecting or derogating from the validity and enforceability of the remainder hereof.

IN WITNESS WHEREOF the parties have each hereunto affixed its respective seal as witnessed by the hands of its proper officers duly authorized in that behalf as of the day and year first above written.

BEAVERBROOK CHARLESWORTH LTD.

Per: *John Wachs*

Seals

**THE HILLS AT CHARLESWORTH
HOMEOWNERS ASSOCIATION**

Per: *[Signature]*

[Signature]
WITNESS

FORM 31

LAND TITLES ACT
(Sections 151 and 152)

AFFIDAVIT OF ATTESTATION OF AN INSTRUMENT

I, Steven Ewasikiw, of Edmonton, in the Province of Alberta, make oath and say:

1. I was personally present and did see Jesse Lafrance who is known to me to be the person named in the within (or annexed) instrument, duly sign the instrument;

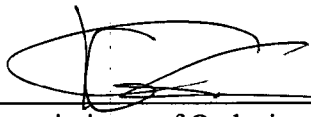
or

I was personally present and did see _____, who, on the basis of the identification provided to me, I believe to be the person named in the within (or ~~annexed~~) instrument, duly sign the instrument;

2. The instrument was signed at City of Edmonton, in the Province of Alberta, and that I am the subscribing witness thereto;

3. I believe the person whose signature I witnessed is at least eighteen (18) years of age.

SWORN before me at EDMONTON
in the PROVINCE OF ALBERTA,
this 8th day of June 2015,
A.D. 2012



A Commissioner of Oaths in and for the Province of Alberta.

Print Name: KAI C. CHOI

My Commission Expires: 27 Feb 2016



(Signature)

KAI C. CHOI
COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA
MY COMMISSION EXPIRES FEB 27 2016

Feb 27, 2016

FORM 31.1

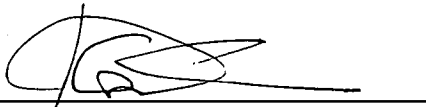
LAND TITLES ACT
(Section 161)

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, Jesse LaFrance, of Edmonton, in the Province of Alberta, make oath and say:

1. I am an officer or director of The Hills at Charlesworth Homeowners Association named in the within or annexed instrument (or caveat).
2. I am authorized by the corporation to execute the instrument (or caveat) without affixing a corporate seal.

SWORN before me at EDMONTON
in the PROVINCE OF ALBERTA,
this 8th day of June 2015,
A.D.

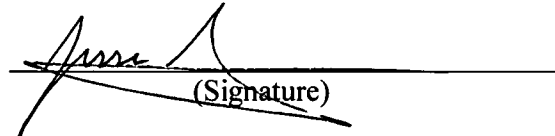


A Commissioner of Oaths in and for the
Province of Alberta.

Print Name: KAI C. CHOI

My Commission Expires: 27 Feb 2016

KAI C. CHOI
COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA
MY COMMISSION EXPIRES FEB. 27, 2016



(Signature)

✓

SCHEDULE "A"

TO ENCUMBRANCE AGREEMENT

The Subdivided Lots are legally described as follows:

**PLAN 152 2167
BLOCK 1
LOTS 3 TO 11 INCLUSIVE
BLOCK 4
LOTS 1 TO 9 INCLUSIVE**

AND

**PLAN 152 2199
BLOCK 1
LOTS 12 TO 39 INCLUSIVE
BLOCK 2
LOTS 1 TO 31 INCLUSIVE**

EXCEPTING THEREOUT ALL MINES AND MINERALS

SCHEDULE "B"

TO ENCUMBRANCE AGREEMENT

The Hills at Charlesworth Subdivision is located within the lands legally described (prior to the subdivision referred to in Schedule "A" hereto) as follows:

**MERIDIAN 4 RANGE 24 TOWNSHIP 51 SECTION 25 ALL THAT PORTION OF
THE SOUTH EAST QUARTER LYING SOUTH AND WEST OF SUBDIVISION PLAN
9823999; CONTAINING 29.5 HECTARES (73.01 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS**

AND

**PLAN 9823999
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS**



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