

ENCUMBRANCE

WEST DISTRICT LANDS

DATED: July 1, 2020

*To secure an annual rent charge of \$250.00 (the “**Annual Rent Charge**”) plus the Adjustment Amount, Additional Costs and applicable GST (as such terms are hereinafter defined) in respect of each of the Lots described in Schedule “A” attached hereto, pursuant to the Land Titles Act (Alberta) and the Law of Property Act (Alberta).*

TRUMAN HOMES 1995 INC. as encumbrancer (who and whose successors-in-title to the below-described lands are hereinafter called the “**Owner**”), being registered as 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 the parcel of land situated in the Province of Alberta, Canada, as more particularly described in Schedule “A” attached hereto and forming part hereof (each such parcel being hereinafter separately referred to as a “**Lot**” or collectively referred to as the “**Lots**”) and desiring to render the Lots available for the purpose of securing the Annual Rent Charge plus the Adjustment Amount, Additional Costs, and applicable GST (as each of those terms is hereinafter defined) to and for the benefit of **WEST DISTRICT HOME OWNERS ASSOCIATION** (which together with its successors and assigns is hereinafter called the “**Association**”), as encumbrancee, which is or will become owner of certain Lots and amenities and does now or may hereafter manage, operate, maintain and repair or provide, without limitation, certain recreational facilities and reserve Lots, park Lots, ponds, amphitheater, reflecting pool, skating rink, community garden, boardwalks, public washroom facilities, play structures, upgraded street lighting, signage, walkways, walls, entry monument signs and/or structures, certain interior and perimeter fencing, other features, upgraded Landscaping, irrigation and other services (including, without limitation, maintenance services provided by the Association pursuant to requirements of maintenance agreement(s) made between the Association and the City of Calgary, or otherwise), on Lots owned, controlled or managed by the Association or on Lots owned or controlled by others (including the City of Calgary or the Owner) (collectively the “**Amenities**”), all located or to be located within or adjacent to the community in the City of Calgary known as “West District”, and which the Association will manage, operate, maintain and/or repair such Amenities for the benefit of the Lots, DOES HEREBY SEPARATELY CHARGE AND ENCUMBER the Lots for the benefit of the Association with the Annual Rent Charge plus the Adjustment Amount and Additional Costs (as each of those terms is hereinafter defined), together with applicable GST, for each twelve (12) consecutive months commencing on January 1st, 2021 (the “**Commencement Date**”), to be paid by the Owner to the Association in lawful money of Canada, at the Associations office located at #2236, 10 Aspen Stone Boulevard S.W. Calgary, AB T3H 0K3, (or such other place in Calgary, Alberta as the Association may from time to time or at any time designate in writing) as further set out herein

The “**Adjustment Amount**” as used herein shall mean, commencing on the first January 1 following the Commencement Date, in respect of each calendar year, that sum of money equal to the product obtained by multiplying the amount secured by this encumbrance for the immediately preceding year (including any previously accumulated Adjustment Amounts and Additional Costs) by the greater of:

- (a) ten percent (10%); and
- (b) the increase, expressed as a percentage, over the past calendar year in the “all items” consumer price index (or its equivalent from time to time) for the City of Calgary as issued by Statistics Canada (the “**CPI**”);

plus applicable GST payable thereon.

“**Additional Costs**” as used herein shall mean an additional amount of money, together with applicable GST, required by the Association, in excess of all monies collected from rent charge encumbrances and other revenues, to maintain, repair, provide, operate and manage the Amenities (as defined below). Such Additional Costs will be determined in accordance with the by-laws of the Association, as may be amended from time to time, and will be apportioned, levied and assessed to and upon each person or entity which is a contributor to the Association.

“**GST**” as used herein shall mean the goods and services tax set out in the *Excise Tax Act*, R.S.C. 1985 c. E-15, as amended from time to time.

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

1. The true consideration for the granting of this encumbrance and for the covenant to pay the Annual Rent Charge Amount hereby secured is payment by the Association to the Owner of one (\$1.00) dollar and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Owner).
2. As of the Commencement Date, the Annual Rent Charge is payable in advance to the Association at the address for the Association (or to another address the Association designates in writing) on or before the 1st day of January of each calendar year. In the event that the Annual Rent Charge is payable in respect of a period of less than 365 days, a pro rata calculation of the amount payable shall be made on a per diem basis based upon a calendar year of 365 days and shall be payable within thirty (30) days following such determination.
3. The Owner and the Owner's successors-in-title are automatically members of the Association (subject to limitations as provided in the Association's by-laws in the event of more than one person owning a Lot) during their respective periods of ownership of the Lots and are entitled to the benefits and are subject to the obligations of such membership all in accordance with and subject to the articles of incorporation, by-laws, rules and regulations of the Association, as the same may be amended, supplemented or restated from time to time. In addition to all such rights and obligations, the by-laws of the Association require the levying of periodic fees, usage fees or other charges which must be paid by each member and, in default of payment, such fees and charges are deemed a charge on the Lots owned by the member in arrears of payment and payment of such fees and charges may be enforced in the same manner as provided in this encumbrance or as set out in the articles, rules, regulations or by-laws of the Association. It is therefore essential that anyone purchasing or acquiring an interest in a Lot make inquiries of the Association to determine the status of payment of such fees and charges which are due and owing to the Association. Failure to pay such fees and charges may, in addition to all other remedies available to the Association, result in inability of a member to use certain or all of the Amenities and the inability to vote as a member at meetings of the Association.
4. If there shall be a default in any of the amounts due to the Association by the Owner and secured by this rent charge, then the amount in default shall bear interest at the rate of fifteen per cent (15%) per annum added to the prime commercial lending rate of the Royal Bank of Canada (Calgary Main Branch) (or at such lesser rate if so provided in the by-laws of the Association) calculated monthly not in advance before and after judgement and payment of such arrears and such interest is secured by these presents.
5. The Owner shall also be solely responsible for and shall pay any and all taxes, whether federal, provincial or municipal, including without limitation GST, that may be levied on or in respect of the fees, charges or payments required hereunder and the amount of all such taxes shall form part of the rent charge secured hereby.
6. The Association shall be entitled to and is hereby granted the right of distress together with all powers and remedies given to an encumbrancee under the provisions of the *Land Titles Act*, being Chapter L-4 of the Revised Statutes of Alberta, 2000 and the *Law of Property Act*, being Chapter L-7 of the Revised Statutes of Alberta, 2000, in each case as amended or replaced in respect of the matters set out therein.
7. Any discretion, option, decision or opinion hereunder on the part of the Association shall be sufficiently exercised or formed if exercised or formed by or subsequently ratified by the manager, acting manager or an executive officer of the Association or any officer or agent appointed by the Association for such purpose.
8. Any notice to be given by the Association to the Owner may either be delivered to the Owner's address or be forwarded by ordinary mail addressed to the Owner at the civic address of the Lots or to the last address of the Owner known to the Association and shall be deemed to have been received by the Owner on the day of delivery (if delivered) or three (3) business days following the letter being mailed, postage prepaid.
9. If any provision of this encumbrance shall be determined by a Court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this encumbrance shall not be affected thereby and each provision hereof shall be enforced to the fullest extent permitted by law. This encumbrance shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable thereto. The parties irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

10. The Owner shall be responsible for and pay all legal costs, as between a solicitor and his own client on a full indemnity basis, incurred by the Association in respect of any action successfully taken to enforce this encumbrance, all of which costs are additionally secured hereby, and shall constitute a charge on the Lots.
11. The words in the hereinbefore which contain 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 or 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 the case of more than one person constituting the Owner, the said covenants, provisos, conditions and agreements shall be construed and held to be several as well as joint and the charge created hereunder shall be a charge upon the whole estate of the Lots notwithstanding that one of them may not be a member of the Association at the time of the breach of covenant or enforcement of this rent charge.
12. This encumbrance shall enure to the benefit of the holder hereof and its successors and assigns and shall be binding upon each Owner and such Owner's executors, administrators, successors, assigns and successors in title.
13. The covenants and obligations on the part of an Owner set forth in this encumbrance in respect of the Lots shall only bind such Owner while such Owner is the registered owner of a Lot, and no action for damages for any default or breach of any of such covenants and obligations shall lie against such Owner in respect of any default or breach occurring or which occurred at any other time. This paragraph 13 shall constitute an absolute defence to any action brought in contravention of this paragraph 13 and may be pleaded as such.
14. The Owner shall not negative the implied covenants and conditions contained in section 58(1) of the *Land Titles Act* (Alberta) R.S.A. 2000 c. L-4, as may be amended from time to time, it being agreed that this rent charge shall run with the Lots, binding the Lots and each and every part thereof, and each successor-in-title to the Lots from time to time.
15. In the event that the Lots are at any time further subdivided, then the following shall apply:
 - (a) if the Lots are further subdivided pursuant to a conventional subdivision or a bare land condominium plan or strata space plan or a condominium plan which creates separate titles for parcels each containing or intended to contain a residential dwelling, then:
 - (i) this rent charge encumbrance shall separately apply to and charge each parcel created by such subdivision, in each case, with respect to the separate payment of the full Annual Rent Charge Amount, Adjustment Amount, Additional Costs and applicable GST as set forth herein; and
 - (ii) the owner of each of such subdivided parcel, and each of the successors-in-title thereto shall, by acquiring title to each such subdivided parcel, be conclusively and irrevocably deemed to have agreed to become liable for all matters hereunder and remain liable for all matters hereunder at all times during which each of such parties holds title to each such subdivided parcel, all in accordance with and subject to this encumbrance and the by-laws of the Association, as the same may be amended, supplemented or restated from time to time.
16. The Owner acknowledges and agrees, that this encumbrance may be discharged by the Association without the consent of the Owners.

[Remainder of page intentionally left blank, signature page follows.]

IN WITNESS WHEREOF this Encumbrance is dated as of date first written above.

TRUMAN HOMES 1995 INC.

Per: _____

Name:

SCHEDULE "A"
LOTS

PLAN 1910681
BLOCK 66
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS

-AND-

PLAN 1910681
BLOCK 66
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS