

ENCUMBRANCE
(“Utilities”)
Instrument #982 019 882

TRI-WEST RESORTS LTD., of Spruce View, Alberta, as Encumbrancer (herein called the “Owner”) being registered an 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(s) of title of that land situate in the Province of Alberta and legally described as:

Condominium Plan 982 0277
Units 1 to 133
Excepting thereout all mines and minerals

(each unit being hereinafter called a “Unit” and collectively called the “Units”) and desiring to render each of the Unit available for the purpose of securing the Rent Charge hereinafter mentioned to and for the benefit of Tri West Resorts Ltd., as Encumbrancee, who has agreed to maintain and repair roads, water and sewer lines laid in, under, on, over or across the common areas and adjacent lands for the benefit of the Units (the “Utilities”), do hereby encumber each Unit for the benefit of the Encumbrancee and to secure the payment of the Rent Charge and the amounts hereinafter set forth.

The Owner covenants to pay to the Encumbrancee his proportionate share (determined by unit factor apportionment) of all taxes, levies, fees, expenses and charges incurred by or for the account of the Encumbrancee in respect of the operation maintenance, repair and replacement of the Utilities (the “Rent Charge”) for each twelve (12) consecutive months commencing the 1st day of May 1998, in lawful money of Canada, at the Encumbrancee’s office at Spruce View, Alberta (or such other place as the Encumbrancee may from time to time designate in writing) and on or before the 1st day of May in each and every year thereafter.

And in consideration of the Owner’s covenants hereinafter set out, the Encumbrance hereby covenants and agrees with the Owner and with any Mortgagees registered against the certificate of title to the Units.

- (a) that this encumbrance and rent charge secured hereby are, subject to delivery of the matters set out in paragraph (b) below, subordinate to and are hereby postponed to any first specific Mortgagee in respect of the Units or a Unit, whenever and however granted, and to each and every advance made thereunder, so that such mortgage or other security will take precedence and priority in all respects as to principal, interest, rights and remedies; and
- (b) as a true condition precedent to the operation of the postponement referred to in paragraph (a) above, a Mortgagee shall deliver or cause to be delivered to the Encumbrancee, at the address given above, an agreement, in form satisfactory to the solicitors for the Encumbrance that:
- (i) in the event that the Mortgagee shall, for any reason whatsoever, succeed to the interest of the Owner or its successor in title in any of the Units, 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 the terms, covenants and conditions of this Encumbrance, and the Encumbrancee shall from and after such event have the same remedies against the Mortgagee for the breach on the part of the Mortgagee occurring in respect of the Units from and after such event that the Encumbrancee might have had under such Mortgage against the Owner if the Mortgagee had not succeeded in the interest of the Owner.
 - (ii) if the interest of the Owner in the Unit(s) under the Mortgage 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 Encumbrancee, notwithstanding the delivery, 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 Encumbrancee, said attornment to be effective and self operative without the execution of any further instruments upon the Mortgagee succeeding to the interests of the Owner in the Unit(s). Upon the transfer to the Mortgagee, as aforesaid, the Mortgagee shall not cause this Encumbrance to be discharged from the title(s) of the Units or any of them.

And the Owner 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 sale by the previous registered owner of the Unit(s) to the Owner or the payment by the Encumbrancee of the sum of one (\$1.00) dollar and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), and the construction of the Facility for the benefit of, *inter alia*, the Owner.
2. The Owner shall pay the said rent charged to the Encumbrancee at the times and place hereinbefore set forth without deduction or defalcation; and that any amount in default shall bar Interest at the rate of five (5%) percent per annum above the prime rate of interest charge by the Province of Alberta Treasury Branches at its main branch in Calgary, Alberta, calculated and compounded monthly, and the payment of the said rent charge and such interest is secured by these presents.
3. The Encumbrancee or its successors in title as owner or owners of the said rent charge, shall be entitled to and are hereby granted the right distress together with all powers and remedies of an encumbrance under the *Land Titles Act* (Alberta).
4. For the purpose of realizing the security hereby 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 and/or foreclosure concurrently or otherwise with any other step or proceeding available to it in law and equity.
5. The Owners shall pay all legal costs incurred by the Encumbrancee in respect to the enforcement of this Encumbrance, as between a solicitor and his own client together with taxable court costs, all of which costs are secured hereby and shall constitute a charge on the Units.
6. Any notice to be given by the Encumbrancee to the Owner may be delivered to the Owner's address or be forwarded by ordinary mail addressed to the Owner at the municipal address of the Unit 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 when delivered three (3) business days following the letter being deposited, postage prepaid, at the post office.
7. If any provision of the 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.
8. The waiver of any one or more defaults under this Encumbrance shall not be construed as a waiver of any subsequent or other default.
9. These benefits shall enure to the benefit of the Encumbrancee, its successors and assigns and shall be binding upon the Owner and the Owner's executors, administrators, successors and assigns and successors in the title, PROVIDED HOWEVER that on conveyance of its interest in any of the Units, the Owner without any further written agreement, shall be freed and released of liability under its covenants and obligations contained herein.

10. The words in the hereinbefore covenants, provisos, conditions and agreements referring to the Owner which import the singular member shall read and construed 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 case of more than one Owner, the said covenants, provisos, conditions and agreements shall be held to be several as well as joint.
11. Notwithstanding anything to the contrary contained herein, nothing obligates Tri-West Resorts Ltd. to pay the Rent Charge with respect to any Unit as long as it or any of its associates or affiliates are the beneficial owner of that Unit.
12. This Encumbrance shall be construed by and governed by the laws of the Province of Alberta.

IN WITNESS WHEREOF the Owner has subscribed, affixed the Owner's seal and delivered these presents as the Owner's deed as of the 9th day of December, 1997.

TRI-WEST RESORTS LTD

Per: "Tri-West Resorts Ltd." (c/s)

**REPRODUCED COPY OF INSTRUMENT 982 019 882 REGISTERED
AT NORTH ALBERTA LAND TITLES REGISTRATION DISTRICT
ON THE 20TH DAY OF JANUARY, 1998.**