

ERIN RIDGE

**RESTRICTIVE COVENANT, EASEMENT
AND ENCUMBRANCE AGREEMENT**

WHEREAS James Franklin Henderson and Diana Dale Henderson as Joint Tenants (the "Hendersons") are the registered owners of the lot legally described as Plan 9924952, Block 3, Lot 189;

AND WHEREAS the Developer is the registered owner of all of the remaining Lots;

AND WHEREAS the Developer wishes to develop and market the Project;

AND WHEREAS it is the intention of the Developer to preserve for the Project and for the mutual benefit of the Owners the following features:

- (a) the occupation of the Project by adults only,
- (b) development control, and
- (c) the sharing of maintenance of grounds, landscaping and common facilities by and through the Homeowners Association;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants herein, the Hendersons, the Developer, and the Developer (on behalf of itself and the Owners), and the Homeowners Association agree as follows:

ARTICLE 1 - DEFINITION AND INTERPRETATION

1.1 The following definitions shall apply to all parts of this Agreement:

- (a) "Agreement" means this Restrictive Covenant, Easement and Encumbrance Agreement registered against the titles to the Lots;
- (b) "Approving Authority" means the Developer as long as it remains the legal or beneficial owner of a Lot or the Homeowners Association if the Developer no longer qualifies;
- (c) "Board" means the board of Directors of the Homeowners Association;
- (d) "Building" means the residential building and garage with appurtenances thereto, constructed or to be constructed on a Lot;
- (e) "Developer" means Erin Ridge (2000) Ltd.;
- (f) "Directors" means duly elected members of the Board;
- (g) "Homeowners Association" means the society incorporated under the Societies Act (Alberta) known as Erin Ridge Active Adult Living Homeowners Association;

- (h) "Homeowners Association's Costs" for any period shall mean any and all costs incurred or to be incurred in such period (including without limitation costs of administering the Homeowners Association, reasonable reserves for future maintenance, repair and replacement) by the Homeowners Association in and in respect of carrying out and exercising its rights, duties and obligations hereunder, as determined by the Board from time to time.
- (i) "Lots" shall mean the sixty three (63) residential lots located in St. Albert, Alberta legally described as: Plan 992 4952 Block 3 Lots 166-178, 181-199, 201 & 202; and Plan 992 4952 Block 16 Lots 6-18 Inclusive; and Plan 992 4952 Block 17 Lots 1-16 Inclusive;
- (j) "Manager" means a Person employed by the Homeowners Association to assist it in managing its affairs and carrying out its rights and obligations;
- (k) "Owner" means a Person, other than the Developer, who is registered as the owner of the fee simple estate in a Lot from time to time;
- (l) "Project" means the development known as Erin Ridge consisting of detached and semi-detached single-family homes and the Lots;
- (m) "Person" means an individual, a corporation or other legal entity and the heirs, executors, administrators or other legal representative of a Person;
- (n) "Purposes" means the placing, maintaining and caring for all landscaping, gardens, and other exterior grounds, areas and amenities of each lot, including without limitation cutting, trimming, treating, maintaining and caring for (other than watering) lawns, gardens, trees and shrubs and also for removing ice and snow from walks, steps and garage driveways;
- (i) "Rent Charge" means for the period prior to the Start Date, the Owners share of the costs incurred by the Developer pursuant to Article 5.3 and thereafter 1/63 of the Homeowners Associations Costs, as well as any interest thereon as provided in this Agreement and such costs as may be incurred by the Homeowners Association in enforcing its security for the payment of the Rent Charge;
- (o) "Special Resolution" shall have the same meaning as is give to such term in The Societies Act, R.S.A. 1980;
- (p) "Start Date" means the date which is the earlier of January 1, 2004 and the date which the Developer sets as the Start Date, by notice in writing to the Association not less than 3 months before such date;
- (q) "Term" means eighty years commencing on the date of this Agreement.

1.2 The burden and the benefit of the covenants in this Agreement shall run with and bind the Lots.

1.3 The covenants and conditions in this Agreement shall only be personally binding upon or enure to the benefit of the Developer or the Owner while it or they remain the registered or beneficial owner or owners of any of the Lots and then only in respect of such Lots as are owned by it or them.

1.4 Whenever the singular number or neuter or masculine gender is used herein, the same shall be construed as including the plural and such other genders as the context requires.

1.5 This Agreement and the rights, licenses, interests, privileges and charges hereby granted shall expire at the end of the Term.

1.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

1.7 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.

ARTICLE 2 - RESTRICTIVE COVENANT

2.1 The land use and occupancy restrictions described in this Article 2 as being applicable to the Lots shall be and be deemed to be covenants running with the Lots and shall enure to the benefit of all Lots in the Project (other than the Lot against which they are being enforced) and may accordingly be enforced in respect of any Lot for the benefit of which they have been granted by the Owner of such Lot.

2.2 The restrictions that shall apply to each Lot are the following:

- (a) No Building shall be constructed on any Lot, except by the Developer unless prior approval in writing is given by the Developer;
- (b) No addition to, or alteration to the exterior of, any Building shall be made without prior approval in writing of the Approving Authority. Approval by the Approving Authority may not be obtained unless plans and specifications of the addition or alterations are first provided to the Approving Authority. Nothing in this clause shall prevent an Owner or occupant of a Lot from effecting repairs to a Building restoring the same to its original state of appearance, design and use;
- (c) Except where installed or constructed by the Developer (who shall not be subject to the within limitation), no fences, walls, barriers, or structures other

than the Building shall be constructed or placed on any Lot without prior approval in writing is given by the Approving Authority;

- (d) No gardens of any kind shall be placed or maintained on any Lot other than such as:
 - (i) are placed or made by the Developer or the Homeowners Association; or,
 - (ii) are flower gardens or vegetable gardens placed or made by an Owner with prior written approval of the Approving Authority and then only for so long as such Owner or his successors or assigns shall keep and maintain such garden to standards and appearance determined from time to time by the Approving Authority to be acceptable to it in its sole discretion. In no case shall any gardens be placed or maintained that detract from the general appearance of the Project or any area surrounding or adjacent to the garden;
- (e) Except for the Building, no tent, shack, barn, utility shed or other structure, shall at any time be erected on any Lot or used temporarily as a residence or for any other purpose;
- (f) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. Cats, dogs, and other household pets may be kept provided:
 - (i) the pet has had the necessary shots to protect it against rabies and distemper;
 - (ii) the pet must be in the custody of a responsible person and on a leash unless it is in the Unit or on the Owner's Lot;
 - (iii) the pet shall not be leashed to shrubbery, flowers or small trees and the Owner shall be responsible for the daily pick up and disposal of waste;
 - (iv) the Owner shall be responsible for and pay for any damage or destruction caused by the pet to any property;
 - (v) the Owner will pay any penalty (to a maximum of \$50.00 for each breach) imposed by the Approving Authority for a breach of any of the foregoing, and the Owner hereby gives the Approving Authority the right to levy such penalty;
- (g) No outdoor clothes-hanging devices and no outdoor communication or other satellite dishes, or aerials or similar devices shall be placed or kept on any Lot without the prior written approval of the Approving Authority;

- (h) All goods and chattels other than patio or deck furniture shall be kept and stored inside the Building except when in actual use;
- (i) No motor vehicle shall be parked anywhere within the Project except on paved parking surfaces, driveways or in garages. Further, no truck trailers shall be parked anywhere on or within the Project;
- (j) No boats, boat trailers, campers, travel trailers, mobile homes, recreation vehicles or similar chattels, and no motor vehicles that are not in operating condition and licensed, shall be kept within the Project unless they are kept inside a garage and concealed from public view. For the purposes of this clause "kept" shall mean present within the Project for any period exceeding 48 hours;
- (k) No vehicle repairs or similar activity shall be conducted on any Lot except inside a garage and concealed from public view; and
- (l) No person under the age of eighteen (18) years shall occupy or dwell in any Building unless:
 - (i) that person lives with his/her spouse who has attained his/her 18th birthday; or
 - (ii) that person is an occasional visitor for a period not exceeding twenty-one (21) consecutive days.

2.3 Where the Approving Authority is the Homeowners Association, any approval to be given by the Approving Authority is subject to the passing of a Special Resolution granting such approval.

ARTICLE 3 - EASEMENT

3.1 The Developer, for itself and the Owners, hereby grants to itself for itself and the Owners and to the Homeowners Association for itself and its successors and assigns, the easement, right, license and privilege to enter upon, do work and maintenance and to pass and repass over all portions of the Lots (and each Lot respectively) not covered by a Building, for the Purposes.

3.2 Nothing in this Agreement shall obligate the Developer or the Homeowners Association to perform any acts which are necessary to carry out the Purposes.

3.3 The rights, licenses, easement and privileges granted in this Article 3 shall:

- (a) be covenants running with the Lots,
- (b) bind the Lots and the Owners,

- (c) include the right to enter and carry out the Purposes by or through servants or agents together with all manner of machinery necessary or suitable for the Purposes, and
- (d) be limited to the hours of 9:00 a.m. to 9:00 p.m. each day.

3.4 In addition, the rights, licenses, easement and privileges granted in this Article 3 shall include the right of the Developer and the Homeowners Association to use the water of an Owner (at the cost and expense of the Owner) for the Purposes where applicable. Each Owner shall permit the Developer and the Homeowners Association to connect hoses and other such devices to his water supply and the taps on his Lot. Such use shall be reasonable and the Homeowners Association shall apportion the use of water reasonably between the various Lots so as not to over-burden any one Lot with the servicing of other Lots.

ARTICLE 4 - THE HOMEOWNERS ASSOCIATION

4.1 Every Owner and the Developer (as long as it is registered as an owner of a Lot) shall be a member of the Homeowners Association and shall be bound by the Homeowners Association's Application for Incorporation, By-Laws, Rules and Regulations, and this Agreement.

4.2 Registered ownership shall be the sole qualification for membership in the Homeowners Association. When a Lot is owned by two or more Persons all such persons shall be members of the Homeowners Association. An Owner of more than one Lot shall be entitled to one membership for each Lot owned by him. Membership shall be transferred automatically by conveyance or other transfer of that Lot. Anyone who ceases to be an Owner shall ipso facto cease to be a member.

4.3 The Homeowners Association shall have one class of voting membership. All votes shall be cast in the manner provided in the By-laws and in no event shall more than one (1) vote be cast with respect to any Lot.

4.4 Until such time as the Developer has sold and transferred at least forty five (45) Lots to Owners, it may select and designate as members of the Homeowners Association, five (5) or more persons (who may be officers, directors, or employees of the Developer and who shall be eligible to be members even though they do not own any Lots). Such persons shall be the signatories to the Homeowners Association's incorporation and charter documents and shall automatically cease to be members after the Developer's transfer of the forty fifth Lot. Notwithstanding their ceasing to be members, they shall be entitled to serve as Directors and officers of the Homeowners Association until the Developer no longer owns any Lots.

4.5 The Homeowners Association, subject to the rights of the Owners set forth in this Article 4, shall be responsible for the management, maintenance and control of all

exterior grounds, lawns, gardens, shrubs, trees, fences and gates and the keeping of the same in good, clean and proper condition, order and repair (excluding repair and replacement of sidewalks, steps and driveways and watering of grounds, lawns, gardens shrubs and trees which repair and watering shall be the responsibility of the Owner of the Lot affected). Such good, clean and proper condition will include cutting, trimming, treating, maintaining and caring for lawns, gardens, trees and shrubs and also for removing ice and snow from sidewalks, steps and garage driveways.

4.6 The Homeowners Association may obtain, employ and pay for the services of a Manager to assist in managing its affairs and carrying out its rights and obligations hereunder to the extent it deems advisable, as well as such other personnel as the Homeowners Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Homeowners Association or by the Manager. Without limitation, the Homeowners Association may contract with or employ the Developer to perform and exercise (and in the Homeowners Association so contracting the Developer, the representative it elects under this paragraph shall be free to exercise the Developer's voting right in the Homeowners Association) its rights and obligations or to act as Manager. From and after the Start Date, any management agreement must be terminable for cause upon thirty (30) days notice, be for a term not to exceed one year, and be renewable only upon mutual consent of the parties to such agreement.

ARTICLE 5 - COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 On the 1st day of each month commencing on May 1, 2000, each Owner shall pay the Rent Charge to the Homeowners Association in such monthly amounts as determined by the Homeowners Association from time to time.

5.2 The Board shall from time to time estimate the Homeowners Association's Costs for such period as it deems convenient for its administration and shall notify each Owner of such costs, the Rent Charge, and the monthly payment amount by notice in writing delivered to or mailed by ordinary mail to the Owner.

5.3 Notwithstanding anything herein contained, prior to the Start Date the Developer shall provide all duties and functions of the Homeowners Association at the cost of the Homeowners Association. During such period of time the Developer shall pay any costs relating to the Lots registered in the name of the Developer and the remaining costs will be divided equally among the Owners. From and after the Start Date, the Developer shall for the purposes of this Article 5 be an "Owner" and be subject to all Rent Charges levied on Lots owned by it.

5.4 The Board shall be the sole determiner of the Homeowners Association's Costs and a certificate stating the same and signed by two or more Directors or an Officer of the Developer shall be conclusive and binding on all the Owners.

5.5 Without limiting the foregoing, the Homeowners Association hereby confirms that the Rent Charge for each Lot for the period commencing May 1, 2000 to and including

the Start Date shall not exceed the sum of \$70.00 per month per Lot and such Rent Charge shall be payable on the 1st day of each month commencing May 1, 2000.

5.6 If the Homeowners Association fails or omits to determine or notify the Owners of the Rent Charge for any portion of the Term hereof from and after the Start Date, or if the Rent Charge for any portion of the Term shall otherwise not be ascertained or ascertainable then the Rent Charge for such portion of the Term shall be and be deemed to be \$70.00 per month for each and every month during such portion of the Term.

5.7 The Developer being registered owner of the Lots and desiring to render each Lot available for the purpose of securing to and for the benefit of the Homeowners Association the Rent Charge applicable to such Lot as provided in this Article 5 does hereby encumber mortgage and charge each such Lot as security for payment of the Rent Charge applicable to each such Lot, in favour of the Homeowners Association and the Homeowners Association shall be entitled to all powers and remedies given to an Encumbrancee by the Land Titles Act.

5.8 Any Rent Charge not paid when due shall bear interest and an Owner shall pay interest on the Rent Charge in default at the rate of fifteen (15%) per cent per annum calculated monthly, not in advance, from its due date until paid.

5.9 Without limiting any other remedies the Homeowners Association may have, the Homeowners Association may (at its sole option) decline to maintain, care for or service any Lot in respect of which Rent Charges are unpaid, until all such arrears, interest thereon and costs of the Homeowners Association on a solicitor and own client basis are fully paid.

5.10 The Homeowners Association shall be at liberty, in its sole discretion, to postpone the Encumbrance herein provided for, in respect of any Lot, to a registered first mortgage of such Lot.

This Restrictive Covenant, Easement and Encumbrance Agreement is dated March, 8, 2000.

Address of HOMEOWNERS ASSOCIATION
is as follows:
5410 - 97 Street
Edmonton, Alberta
T6E 5C1

ERIN RIDGE (2000) LTD.

Per: _____

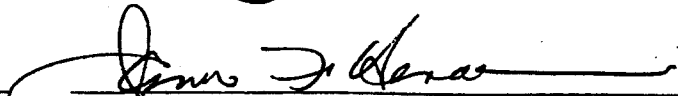
**ERIN RIDGE ACTIVE ADULT LIVING
HOMEOWNERS ASSOCIATION**

Per: _____



Witness

H:1196021\JM13644.WPD



JAMES FRANKLIN HENDERSON



DIANA DALE HENDERSON

AFFIDAVIT OF EXECUTION FOR WITNESS


I, ERIN D. OOR, of the City of St. Albert,, in the Province of Alberta, MAKE OATH AND SAY:

1. THAT I was personally present and did see JAMES FRANKLIN HENDERSON and DIANA DALE HENDERSON named in the annexed instrument, who are personally known to me to be the person(s) named therein, duly sign and execute the same for the purpose named therein.
2. THAT the same was executed at St. Albert, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said person(s) and each are in my belief the full age of eighteen (18) years.

SWORN before me at the City of)
Edmonton, in the Province of Alberta, this)
21 day of March, 2000.)


A COMMISSIONER FOR OATHS IN AND)
FOR THE PROVINCE OF ALBERTA)

PODUMIL F. ROMANKO
BARRISTER & SOLICITOR


ERIN D. OOR