

L E A S E

THIS LEASE is entered into this 21 day of July, 1979, by and between ARIZONA EASTERN STAR HOME, an Arizona corporation (herein called "Lessor"), and HIGHLAND BILTMORE PROPERTIES, LTD., an Arizona limited partnership (herein called "Lessee");

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. Leased Premises. Lessor hereby leases to Lessee, and Lessee hereby takes and rents from Lessor, upon the terms and subject to the conditions herein set forth, that certain real property and all improvements now or hereafter located thereon during the term of this Lease, which property is located in the City of Phoenix, County of Maricopa, State of Arizona, and more fully described on Exhibit A attached hereto and incorporated fully herein by this reference (hereinafter called the "Leased Premises").

2. Term.

A. Prior to Determination Date. The term of this Lease shall commence upon the execution hereof and continue for a period of eighty-two (82) years from and after August 10, 1979.

B. Following Determination Date. Upon the Determination Date, as hereinafter provided, the term of this Lease shall automatically and without further act or deed be extended to and for a period of ninety-nine (99) years commencing on such Determination Date and ending at 12:00 midnight on the 99th anniversary of such date.

3. Plan of Development.

A. The Declaration. Lessee expects, but shall not be obligated, to record a declaration of horizontal property regime dividing the Leased Premises into sixty-one (61) residential leasehold condominium units and various common elements and facilities containing covenants, conditions, restrictions and dedications and having such other terms not prohibited by this Lease as Lessee may in its sole discretion determine. Such declaration of horizontal property regime as amended from time to time and any subsequent declaration is hereinafter called the "Declaration."

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B. Subordination to Declaration. Lessor hereby consents to, and irrevocably grants to Lessee a power of attorney coupled with an interest, with power of substitution, for the purpose of recording, amending or terminating the Declaration or recording subsequent Declarations. Both this Lease and the entire leasehold estate hereby created and Lessor's entire fee interest in the Leased Premises, including any lien, encumbrance or other matter affecting title placed of record against such fee interest subsequent to the date when this Lease is recorded, are hereby made junior and subordinate and subject in all respects to such Declaration, such subordination to have exactly the same legal force and effect, no more and no less, as if such Declaration had been duly placed or record by Lessor on the fee interest to the Leased Premises prior to this Lease being executed and recorded. Upon request of Lessee, Lessor will execute such Declaration or other instruments necessary to evidence the subordination herein provided.

C. Determination Date. The term "Determination Date" as used throughout this Lease shall mean the date on which all of the following shall have occurred: (i) Lessee shall have placed or caused to be placed or record the Declaration; (ii) the Homeowners Association provided for in the Declaration shall have been duly formed; (iii) the original Lessee hereunder and said Homeowners Association shall have caused to be recorded with respect to the Leased Premises a certificate of assignment and assumption and a sublease of form and substance approved by Lessee in its sole discretion; and (iv) the Arizona Real Estate Department shall have issued a property report which permits the offer and sale of Units in the horizontal property regime created by the Declaration; provided, however, that the conditions specified in this subsection (iv) may be waived by Lessee in its sole discretion by an instrument in writing executed by Lessee and delivered to Lessor, in the manner hereinafter provided for the giving of notices.

D. Substitute Lessee. Upon the Determination Date, automatically and without further act or deed, (i) the Home-owners Association shall be and become the Lessee hereunder; and (ii) the original Lessee (or any assignee of such Lessee permitted pursuant to subparagraph 11.A.3. or 11.A.5.) shall be and become the Sublessee of each and all of the Units of such horizontal property regime, subject in all respects to Section 11 hereof and to all other terms hereof applicable to Sublessees. The original Lessee shall nevertheless remain contingently liable for all obligations of the Lessee until all of the Subleases shall have been assigned to persons other than such original Lessee, at which time such original Lessee shall be released from all liabilities and obligations as Lessee hereunder.

E. Deadline for Determination Date. Any other provision hereof to the contrary notwithstanding, in the event that the Determination Date shall not have occurred on or before the third anniversary date of this Lease, the right of Lessee to develop the Leased Premises as a condominium project shall cease, all provisions hereof which are to take effect on or after the Determination Date shall be null and void, and this Lease shall remain in full force and effect throughout the remainder of its term according to the terms hereof which are in effect prior to the Determination Date.

4. Rent.

A. Rental Prior to Determination Date. The following provisions shall apply prior to the Determination Date:

1. The initial rental hereunder shall be the sum of Five Thousand Five Hundred Twenty-Two Dollars and Eighty-Eight Cents (\$5,522.88) per year.

2. At and as of the end of calendar year 1987, and as of the end of each ten (10) year period thereafter, the annual rent payable hereunder shall be

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subject to adjustment so as to constitute six percent (6%) of the then fair market value of the Leased Premises (but not including for this purpose any improvements thereon), as of the end of each such period; provided, that regardless of such fair market value, (i) no single rent adjustment shall increase by more than ten percent (10%) over the rent payable for the final year of the preceding 10-year period, and (ii) the annual rent shall not at any time exceed SEVEN THOUSAND THREE HUNDRED TWELVE DOLLARS (\$7,312.00) nor be less than the initial rental provided in subparagraph 4.A.1.

3. If by a date ninety (90) days prior to the end of any such period, Lessor and Lessee shall not have determined by mutual agreement the rent to be paid during the next 10-year period, the amount of such rent shall be determined by an appraiser mutually acceptable to Lessor and Lessee, who shall be a member of the American Institute of Real Estate Appraisers, or, if such organization shall have ceased to exist, such other organization, if any, as shall have been created with similar objectives. If Lessor and Lessee cannot agree on an appraiser, each shall promptly designate one such appraiser by means of written notice to the other, and the two so designated shall by mutual agreement select a third appraiser. The determination by such appraiser, or by a majority of such appraisers if more than one must be selected, shall be final and conclusive as to the determination of the rent payable hereunder. The costs of each such appraisal shall be divided equally between Lessor and Lessee.

4. All rental shall be payable annually in advance of the beginning of each calendar year. The rental for the first and last such years, or for any year during which the Determination Date occurs, shall be prorated according to the number of days in such calendar year during which these rental provisions are in effect.

B. Rental on and after the Determination Date.

On and after the Determination Date, the foregoing provisions shall be superseded and the following shall take effect:

1. The rental payable hereunder shall be calculated as follows. Until the first Sublease is assigned to any person other than Highland Biltmore Properties, Ltd. (or its successor or assign in the initial development and sale of the Leased Premises), the rental shall be the same amount as is provided above in subparagraph 4.A.1. Upon the closing of the assignment of the first Sublease to any such other person, and thereafter from time to time as each additional Sublease is so assigned, the rental shall be re-adjusted to equal the sum of (i) the rental provided in subparagraph 4.A.1. times a fraction the numerator of which is the number of Subleases of which Highland Biltmore Properties, Ltd. (or its successor or assign in the initial development and sale of the Leased Premises) is the Sublessee and the denominator of which is the total number of Units in the horizontal property regime established by the Declaration, plus (ii) the initial full sale rental provided in subparagraph 4.B.2., adjusted as therein provided, times a fraction the numerator of which is the number of Subleases then assigned to persons other than Highland Biltmore Properties, Ltd. (or its successor or assign in the initial

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development and sale of the Leased Premises), or eighteen (18) months from and after the Determination Date, whichever shall first occur, the rental hereunder shall be the initial full sale rental provided in subparagraph 4.B.2., adjusted as therein provided.

2. The initial full sale rental hereunder shall be the sum of Twenty-One Thousand Eighty-One Dollars and Sixty Cents (\$21,081.60) per year.

3. As of the end of the calendar year 1985, and as of the end of each five (5) year period thereafter, the rent payable hereunder shall be subject to adjustment so as to constitute ten percent (10%) of the then fair market value of the real property constituting the Leased Premises, but not including for this purpose any improvements thereon, as of the end of such period; provided, that regardless of such fair market value, (i) no single rent adjustment shall increase by more than twenty-seven and one-half percent (27 1/2%) over the rent payable for the final year of the preceding 5-year period, and (ii) the rent shall never fall below the initial rental specified in subparagraph 4.A.1.

4. If the parties cannot agree on a rental adjustment by a date ninety (90) days prior to the end of any such period, the matter shall be resolved in the manner hereinabove provided in subparagraph 4.A.3.

5. All rental hereunder shall be payable monthly in advance.

5. Utilities and Taxes. Lessee shall be responsible to pay directly to the suppliers thereof all sums due on account of water, gas, electricity and other utilities or services furnished to the Leased Premises during the term of this Lease.

Lessee shall be responsible to pay all taxes, assessments, duties, impositions and burdens levied, assessed, charged or imposed during the term of this Lease by federal, state or local public authorities upon any part of the Leased Premises and all improvements thereon. Lessee shall have the right at its own expense, to protest, contest or otherwise seek reduction of any such taxes, assessments, duties, impositions or burdens, and, when necessary or desirable, to do so in the name of Lessor or in its own name and with its cooperation. For the fraction of a tax year at the end of the term of this Lease, the obligations under this Section 5 shall be prorated as of the end of said term.

If any assessments for local improvements become a lien upon the Leased Premises after the delivery of possession thereof to Lessee, Lessee need pay only the installments thereof which become due and payable during the remainder of the term of this Lease. At the request of Lessee, Lessor shall execute or join with Lessee in the execution of any application or other instrument that may be necessary to permit the payment of such assessments in installments.

After the Determination Date, Lessee may by means of the Declaration delegate its rights, powers and duties under this Section to and among the Sublessees.

6. Quiet Enjoyment. Lessor covenants with Lessee that it has good title to the Leased Premises and the right to make this Lease for its specified term and that Lessee on payment of the stipulated rent and performing the covenants on its part



be performed hereunder, shall freely, peaceably and quietly have, hold and enjoy the Leased Premises during the entire term of this Lease.

7. Waste. Lessee shall not commit or suffer to be committed any waste upon the Leased Premises, or any nuisance, or any other act or thing which may disturb the quiet enjoyment of any other tenant or guest of Lessor in the possession or occupancy of adjacent or neighboring premises.

8. Subordination to Improvement Loans. Lessor and Lessee agree that both this Lease and the entire leasehold hereby created and Lessor's entire fee interest in the Leased Premises are hereby made junior, subordinate and subject in all respects to Improvement Loans, as hereinafter defined. An Improvement Loan shall be a loan to Lessee or any Sublessee during the term of this Lease (i) which is to refinance an existing Improvement Loan and/or to erect, restore, repair, raze and replace, or otherwise improve the Leased Premises or any portion thereof, including but not limited to costs of construction, labor, material and services, transportation, related fees, points and interest, architects', engineers', accountants', attorneys' and other fees and commissions, such improvements to include without limitation all on- and off-site improvements such as buildings, landscaping, fences, walkways, parking areas, recreational facilities and all other improvements of every nature and description; (ii) which does not in the aggregate exceed the sum of one hundred percent (100%) of the fair market value or the cost, whichever is greater, of the improvements located thereon (which shall, in the event of a dispute, be determined in the same manner as is provided in subparagraph 4.A.3.); (iii) which does not extend beyond the term of this Lease; and (iv) which provides to Lessor at least sixty (60) days' prior written notice and opportunity to cure any breach or default before any remedy,

including acceleration of the loan, can be exercised by the lender. From time to time as requested by Lessee or any Sub-Lessee, Lessor shall, for the purpose of securing Improvement Loans, join with Lessee or Sublessee in executing mortgages, deeds of trust or other security documents on the portion of the Leased Premises which the person so requesting is entitled to encumber and improvements erected or to be erected thereon. Should Lessor fail or be unable to do so within seven (7) days after written request, Lessor hereby irrevocably appoints Lessee its attorney-in-fact coupled with an interest, with power of substitution, to execute any such mortgage or deed of trust in Lessor's name. Nothing in the foregoing shall obligate Lessor to join with Lessee or any Sublessee in the execution of any note or other evidence of indebtedness or to incur any personal liability in connection with any such mortgage or deed of trust. The person requesting such execution by Lessor shall hold Lessor harmless and indemnify Lessor from and against any loss, cost, liability, damage or expense arising out of or resulting from the execution by or for Lessor of any such mortgage or deed of trust.

It is expressly agreed that Lessee may at any time demolish, raze and eliminate any improvement upon the Leased Premises, so long as such action either does not impair the value of the Leased Premises or Lessee promptly replaces such improvements with new improvements of at least equal value; provided that no such action shall be taken after the Determination Date unless permitted by the Declaration.

The subordination provided in this Section shall have exactly the same legal force and effect, no more and no less, as if such mortgage or deed of trust had been duly placed of record by Lessor on the fee interest in the property prior to this Lease being executed and recorded; provided, that any such

mortgage or deed of trust recorded after the Determination Date shall be subject in all respects to such Declaration and to the Subleases.

Lessor agrees to execute amendments to this Section 8 which are reasonably required in order to satisfy the requirements of institutional lenders so that they will make Improvement Loans to Lessee and qualified Sublessees, including for example, and without limitation, amendments to the notice periods, provided that Lessor shall not be obligated to make any amendment which is contrary to the terms hereof.

Any other provision hereof to the contrary notwithstanding, the subordination herein provided shall not extend beyond the expiration of the term of this Lease, unless otherwise expressly agreed by Lessor in writing with respect to the particular Improvement Loan for which such subordination is claimed.

9. Insurance on Improvements.

A. In the event that the Declaration or the terms of any loan or other agreement to which the Lessee shall be or become a party shall specify the type of insurance coverage to be maintained by Lessee, the coverage so specified shall be deemed incorporated in and to be a requirement of this Lease; and in such event, Lessee shall maintain such coverage on said improvements at its own sole expense throughout the entire term of such agreement, with only such changes in the amount of coverage as may be permitted or required by such agreement.

B. Whether or not paragraph A of this Section 9 shall become operative, Lessee shall at all times during the term of this Lease maintain at its sole cost on the leased improvements and on any improvements constructed by it on the Leased Premises not less than ninety percent (90%) insurable value fire and extended coverage insurance protecting said improvements against damage or loss from fire, explosion, boiler explosion,

smoke damage, sprinkler leakage, wind storm, flood, riot or civil disturbance, fire, explosion, physical damage or malicious mischief, aircraft or vehicle damage, and lightning, to the extent such insurance is reasonably available. To the extent that this paragraph B would require Lessee to carry concurrently insurance duplicating that required by paragraph A above, this paragraph B shall be wholly inoperative.

C. A certified copy of each policy or policies of insurance required to be maintained by paragraphs A and B shall be furnished to Lessor, and each carrier issuing any such policy or policies shall commit itself to endeavor to notify Lessor in writing at least ten (10) days prior to any cancellation or expiration of the coverage evidenced by any such policy or policies.

D. All losses paid under policies of insurance referred to in paragraphs A and B above shall be devoted to the restoration of the loss, damage or destruction which gave rise to the payment, except as otherwise provided in the Declaration or in any loan or other agreement pursuant to which such insurance was obtained. Without limiting the foregoing, after the Determination Date, all insurance proceeds shall be accounted for and applied as provided in the Declaration.

10. Title to Improvements. On the expiration of this Lease, title to all improvements theretofore erected on the Premises shall automatically vest in Lessor, without payment by Lessor of any compensation whatsoever, and shall thereafter be free and clear of any claim or interest of Lessee or any Sublessee or of any entity whose position was derived from or through Lessee or any Sublessee, except the lien of any mortgage or deed of trust which Lessor has expressly agreed may continue after expiration as provided in Section 8.

Nothing in the foregoing provisions of this Section 10 shall prevent Lessee or any Sublessee from removing prior to the expiration of this Lease, any furniture, fixtures, or

appliances, equipment, improvements and installations belonging to Lessee or such Sublessee which are not part of the integral structure of any improvements and which can be removed without unreasonable or irreparable damage thereto. Built in appliances, including air conditioning units, water heaters and solar equipment, shall be deemed part of the integral structure of the improvements for the purposes of this paragraph. Any damage to the improvements occasioned by any such removal shall, however, be promptly and wholly repaired and restored at the sole expense of Lessee or the Sublessee removing the same, regardless of how such damage occurred.

11. Sublease and Assignment.

A. Prior to the Determination Date, the following provisions shall apply:

1. Lessee may assign, hypothecate as security or sublease this Lease and its leasehold estate subject to the provisions of this paragraph 11.A. In each such assignment, hypothecation or sublease, Lessee shall cause specific reference to be made to this Lease and, except in the case of Improvement Loans, as hereinabove provided, to the fact that the assignment, hypothecation or sublease, as the case may be, is subject and subordinate to the terms hereof. Except with Lessor's written consent first obtained, Lessee shall not enter into any sublease with a term extending beyond the stated expiration date of this Lease.

2. Lessee may, without seeking or obtaining Lessor's consent, assign its entire leasehold interest hereunder or hypothecate it as security for the repayment of sums borrowed by Lessee; provided, that Lessee shall concurrently or promptly thereafter furnish to Lessor (i) a fully executed duplicate original of any such assignment or hypothecation, and (ii) in the case of an assignment, a written undertaking duly executed by the assignee by the terms of which:

(a) the assignee agrees to be bound by the terms and to observe the conditions of this Lease; and

(b) the assignee agrees to pay to Lessor all sums, and to render to Lessor all performances, which thereafter become due during the entire balance of the term of this Lease.

No assignment, hypothecation or other transfer of this Lease shall operate to release Lessee or any subsequent assignor from any obligations or liabilities under the terms of this Lease, except as hereinafter provided in subparagraph 11.A.3.

3. An assignment of this Lease (but not a hypothecation of sublease) with (i) Lessor's written consent and (ii) the submission to Lessor of a written undertaking executed by the assignee, as specified in subparagraph 11.A.2. above, shall operate to release Lessee, and any subsequent assignor satisfying the same requirements, from all obligations and liabilities under the terms of this Lease accruing from and after the effective date of any such assignment or transfer. Lessor shall not withhold its written consent to a request for an assignment of this Lease pursuant to this subparagraph if (i) such request is made at a time when the amount of any outstanding Improvement Loans secured by the Leased Premises or any part thereof pursuant to Section 8 above does not exceed seventy-five percent (75%) of the fair market value of the improvements for which such loans were made, and (ii) the proposed assignee of this Lease shall have a net worth of at least fifty (50) times the annual rent at the time being paid hereunder.

4. Should any entity to which this Lease shall have been hypothecated as security for sums borrowed thereon become vested with the rights of the Lessee under this Lease and thereafter assign this Lease to others satisfying the requirements of subparagraph 11.A.3.(ii), said entity shall thereupon be released from all obligations and liabilities accruing under the terms of this Lease from and after the effective date of such assignment. Nothing in this subparagraph shall release Lessee from any obligations under this Lease.

5. Any other provision hereof to the contrary notwithstanding, it is hereby agreed that this Lease and the rights, duties and obligations of the Lessee hereunder may be assigned to and assumed by Town and Country Condominiums, Inc., an Arizona corporation, upon which assignment this Lease shall be interpreted and construed in all respects as if said Town and Country Condominiums, Inc. had been the original Lessee hereunder; provided, however, that Highland Biltmore Properties, Ltd. shall not be released from any duty or liability hereunder by virtue of such assignment.

B. On and after the Determination Date, the foregoing provisions shall be superseded, and the following provisions shall take effect:

1. Upon the Determination Date, and without further act or deed, the Homeowners Association shall be and become the Lessee hereunder, as hereinabove provided, and thereafter the Leasehold estate may not be encumbered, assigned or otherwise transferred or disposed of by any means whatsoever, except to secure Improvement Loans, as hereinabove defined, and the original Lessee, its successors and assigns, shall

be and become the Sublessee of each or all of the Units established by the Declaration

2. The Subleasehold estate of each Unit shall be separate, may be freely mortgaged, hypothecated or otherwise encumbered, sold, sublet, assigned, transferred or otherwise disposed of (all of which manners of disposition shall be sometimes hereinafter referred to by the term "Transfer"); provided, that no person shall Transfer less than the entire Subleasehold estate of any Unit, including all rights appurtenant thereto; and further provided that all Units, and any Transferee of any Unit or any other person acquiring an interest in any Unit by any means whatsoever, shall be subject to the terms hereof at all times, and any terms of any such Transfer which are contrary to the terms hereof shall be void to the extent of such inconsistency.

3. The term "Sublessee" as used in this Lease shall mean the unconditional assignee of record of the entire Subleasehold interest in each Unit (but not including any assignment for purposes of security, unless such assignment has become absolute under the terms of such security instrument) who shall have assumed the obligations of Sublessee hereunder. Such assignment and assumption shall be effective if accomplished by executing and recording an instrument of assignment and assumption of form and substance approved by the Lessee in its sole discretion. Upon such assignment and assumption, the new Sublessee shall be substituted for the old Sublessee, and the old Sublessee shall be released from all obligations or liability hereunder, except those arising prior to such assignment and assumption.



4. The Sublease of each Unit shall be for a term co-extensive and expiring simultaneously with this Lease. No other Transfer of any Sublease shall be for a term extending beyond the expiration of the term of this Lease, except as hereinabove expressly provided.

5. Each Sublessee shall pay as rental the same percentage of the total monthly rental then payable under this Lease as the percentage interests in the Common Elements which are appurtenant to such Unit under the Declaration; provided, that until such time as all of the Subleases have been assigned to persons other than Highland Biltmore Properties, Ltd. (or its successor or assign in the original development and sale of the Leased Premises), there shall be paid with respect to Subleases held by said Highland Biltmore Properties, Ltd. (or such successor or assign) as rental the same percentage of the rental which would be payable under subparagraph 4.A.1. and there shall be paid with respect to such Subleases held by other persons as rental the same percentage of the rental which would be payable under subparagraph 4.B.2., adjusted as therein provided.

6. The Declaration may contain other provisions not prohibited hereby or by law relating to the Subleases and the rights, duties and liabilities of the Sublessees.

7. Each Sublessee shall comply fully at all times with the covenants, conditions and restrictions contained in the Declaration, and all other provisions of the Declaration applicable to Sublessees.

8. Any other provision hereof to the contrary notwithstanding, if Lessor shall give the Sublessees

written notice that a default has occurred under this Lease and shall instruct the Sublessees to make rental payments thereafter directly to Lessor, each Sublessee shall thereafter make such rental payments directly to Lessor or as Lessor may otherwise instruct in such notice, and neither Lessor nor Lessee shall claim any default under any Sublease by virtue of any action taken in accordance with such instructions from Lessor; provided, that this Section shall apply only to rental payments, and Sublessees shall continue to make payments for Common Element assessments and other performances pursuant to the Declaration directly to the Homeowners Association at all times.

9. Lessor and Lessee, and each person claiming by, through or under Lessor or Lessee, hereby covenant and agree with each Sublessee that so long as said Sublessee shall pay the stipulated rent and other sums required herein and in the Declaration and shall perform the covenants on its part to be performed hereunder and under the Declaration, such Sublessee shall freely, peaceably and quietly have, hold and enjoy the Unit so Subleased and all rights appurtenant thereto hereunder and under the Declaration during the entire term of this lease, notwithstanding any breach of or default under this Lease by Lessee.

10. Any other provision hereof to the contrary notwithstanding, no Sublessee shall, or shall be entitled or empowered to, grant, create or suffer to exist any mortgage, deed of trust or other lien, claim or encumbrance of any nature on any portion of, or interest in, the Leased Premises other than his own Subleasehold estate, and notice is hereby given that

any such prohibited transaction or claim shall be absolutely void and of no force or effect whatsoever. To the extent permitted by law, each Subleasehold estate shall be a separate tax parcel, and the failure of the Sublessee of any Unit to pay all public taxes, assessments and other charges when due shall not give rise to or result in any lien upon any other Unit or upon any interest in such Unit other than such Subleasehold estate.

11. The following provisions are included for the benefit of any Mortgagee of any Subleasehold estate:

(a) The term "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration assigning any Subleasehold estate as security for the performance of an obligation, including without limitation mortgages, deeds of trust and agreements for sale, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code; "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property; and "Mortgagee" means a person secured by a Mortgage, including without limitation the trustee and beneficiary under any deed of trust and the vendor under any agreement for sale.

(b) In the event that any notice is given by Lessor or Lessee to any Sublessee of a Unit, a copy of such notice shall also be given simultaneously to any First Mortgagee of such Unit.

(c) In the event of any default under any Sublease by reason of the Sublessee's failure

to pay any rental hereunder, no First Mortgagee shall be liable for or required as a condition of exercising its secured rights to make such payment, except for rental which accrues from and after the date on which such First Mortgagee becomes the Sublessee (as hereinabove defined) of such Unit.

(d) Any Mortgagee or other person acquiring or proposing to acquire any interest in any Unit shall be entitled upon not more than seven (7) days' written notice to a statement from the Lessee (or the Lessor if it is then collecting rent directly from the Sublessees) setting forth the amount of unpaid rental for such Unit and stating that such Sublease is good, valid and subsisting and that there are no defaults or circumstances which with the passage of time or giving of notice or both would become a default thereunder, or specifying in detail any such alleged defaults or circumstances.

(e) The provisions of this Lease relating to Subleases may not be amended in any material respect without the prior written consent of all First Mortgagees.

12. In the event of any breach or default under any Sublease, Lessee (or Lessor if this Lease is then in default) may, after any applicable notice or grace period specified below, and if such breach or default is continuing, exercise any one or more of the following remedies, without further notice or delay except as may be required by law:

(a) Expend such sums as may be required to correct such breach or default, and charge Sublessee therefor, without, however, curing such default or waiving any other remedy;

(b) Without taking possession of the Unit, require strict performance of all of the liens, covenants or restrictions hereof or of the Declaration, by means of an action for specific performance or for damages, or both; and

(c) Re-enter with or without process of law and repossess and enjoy such Subleasehold estate together with all additions, alterations and improvements thereto, and all of the Sublessee's property thereon, or re-Sublease or Transfer such Unit on such terms as it considers appropriate, and the Sublessee shall remain liable for any damages incurred by reason of such breach or default, including without limitation attorneys' fees.

13. No Sublease shall cease to exist, or be terminated, nor shall the Subleasehold estate be deemed to have merged with the Leasehold or fee estate, by reason of the exercise of any right or remedy by Lessee or by Lessor unless and until either Lessee or Lessor shall have become Sublessee of all of the Subleasehold estates and shall have expressly so elected by a duly recorded instrument.

14. In the event that Lessor shall acquire the Subleasehold estate of any Unit by reason of foreclosure or termination of this Lease at a time when this Lease is in default or otherwise, such Subleasehold estate shall remain subject to the terms hereof and of the Declaration, and Lessor shall pay and perform all covenants and obligations of the Sublessee hereunder and under the Declaration, including without limitation the payment of Common Expenses, and be subject to all

restrictions and remedies, including without limitation the lien of the Homeowners Association for unpaid Common Expenses, after the date when Lessor acquired such Subleasehold estate.

15. To the extent permitted by law, Subleases shall be deemed to be excluded from the Arizona Residential Landlord and Tenant Act by virtue of Arizona Revised Statutes § 33-1308(6) and from any successor to such statute which contains an exception or exemption for condominiums, cooperative or proprietary apartments or other similar arrangements.

12. Improvements.

A. Liens. Except for mortgages or deeds of trust securing Improvement Loans, as hereinabove provided in Section 8, Lessee shall keep the Leased Premises free of or bonded against encumbrances, liens or other charges of any kind occasioned by any act or indebtedness of Lessee or of any person or entity holding under Lessee and shall indemnify and hold Lessor harmless against the same. Notice is hereby given that Lessee is not authorized to grant, convey or permit any lien or encumbrance to attach to the Lessor's fee interest in the Leased Premises or any part thereof, including but not limited to mechanics' and materialmens' and other liens for work or labor done, services performed, materials supplied to the Leased Premises or otherwise.

B. Development. Lessee and each Sublessee, provided the Declaration is complied with, may construct or cause to be constructed any improvements on or serving the Leased Premises. Lessee, but not any Sublessee, may demolish and raze existing improvements, if arrangements satisfactory to Lessor, whose consent shall not be unreasonably withheld, have been made for the construction of new improvements having a fair market value, over and above the amount of any liens thereby attaching to the fee

interest in the Leased Premises, as hereinabove provided in Section 8, at least equal to the fair market value of such razed improvements.

13. Indemnification and Law Compliance.

A. Duties. Lessor shall have no responsibility or liability whatever in connection with the construction, maintenance, use or occupation of any improvements on the Leased Premises, whether now existing or hereafter constructed. Lessee shall be solely responsible for and shall save and defend Lessor harmless from and against any damage to property or injury to or death of any person or persons arising during the term of this Lease upon the Leased Premises or in connection with the use or operation thereof or upon or in connection with the use of the adjoining streets, driveways, sidewalks or alleys. Lessee shall not use or permit the Leased Premises or any part thereof to be used in contravention of any applicable governmental laws or regulations, including without limitation zoning regulations and laws regarding the construction, repair, remodeling or alteration of improvements on the Leased Premises, and Lessee shall save and defend Lessor harmless from any penalties or damages which may be imposed or incurred by reason of violation of any such laws or regulations during the term of this Lease.

B. Attorneys' Fees. In the event Lessor shall be made a party to any litigation by or against Lessee as the result of any alleged lien, judgment or encumbrance caused, suffered or permitted against the Leased Premises by Lessee or as the result of any claim or action arising from or in connection with any damage to property or injury to or death of a person or persons against which Lessee is required by the foregoing provisions of this Section 13 to hold Lessor harmless, Lessee shall pay all costs, expenses and attorneys' fees incurred by Lessor in connection with such litigation, whether or not the claims therein are justified.

C. Liability Insurance. To assure Lessee's financial ability to fulfill its commitments under this Section 13, but without limiting the liability of Lessee, Lessee at all times during the term of this Lease shall maintain in full force and effect, with an insurance carrier satisfactory to Lessor, a policy or policies of liability insurance with limits of not less than \$250,000.00 for property damage, or \$1,000,000.00 for injury to or death of one or more persons in a single accident or occurrence. Such limits shall be increased if and to the extent that the amount of liability insurance typically carried by other similar Homeowners Associations in Phoenix, Arizona, shall be higher than such specified amounts. Such policies shall contain waiver of subrogation provisions against Lessor, if reasonably available, and Lessor shall at all times be one of the insureds named in such policy or policies. A certified copy of each such policy shall be furnished to Lessor, and each insurance carrier issuing any such policy shall commit itself to endeavor to notify Lessor in writing at least ten (10) days prior to any cancellation or expiration of the coverage evidenced thereby.

14. Eminent Domain.

A. In the event condemnation or similar proceedings in exercise of a right of eminent domain (including any stipulation or settlement arrangements in the course of any such proceedings) are commenced and Lessee receives notice thereof prior to the Determination Date and such proceedings result in the taking of a portion of the Leased Premises, the following provisions shall apply:

1. Rental thereafter payable hereunder by Lessee shall be reduced by a fraction in which the denominator will be the total number of square feet of the Leased Premises and in which the numerator will be the number of such square feet which are being taken through any such proceeding. Any such rent



reduction shall be effective as of the date possession is taken by the condemning instrumentality, and the rent payable hereunder for the lease year in which such taking occurs shall be adjusted on a prorated basis by crediting the appropriate adjustment on the next installment of rent due hereunder.

2. Lessor shall be entitled to all compensation awarded by reason of the taking of the fee interest in the Leased Premises, but not including any portion of any award expressly made on account of the taking of or damage to the leasehold estate or any improvements or property of Lessee.

3. Lessee shall be entitled to the amount of the compensation, if any, on account of damage to or the taking of the leasehold estate or of any improvements erected or other property of Lessee located upon the Leased Premises, including restoration cost and any consequential damage award. The amount of such award shall be devoted, to the extent necessary, to the restoration of the improvements damaged as a result of the taking.

4. The balance, if any, of the award hereinabove referred to in subparagraph 14.A.3. which remains after payment of the cost of restoration of improvements shall be prorated between Lessor and Lessee. The portion thereof to which Lessee shall be entitled shall be a fraction in which the denominator will be ninety-nine (99) and the numerator will be the number of years (including a major fraction of a year) of the term of this Lease remaining from the date of such taking; and the remainder shall belong to the Lessor. However, Lessor's said remainder may, at Lessee's election, be used for the account of Lessee

in repayment of any loan then secured by Lessee's interest in this Lease; and the amount of Lessor's said remainder so used, if any, shall be repaid by Lessee to Lessor in equal annual installments of principal and imputed interest at the rate of seven percent (7%) per annum over the remaining term of this Lease, the first such payment to be made at the date of the first payment of rent falling due after such award is paid.

5. All rights and interests of Lessor and Lessee respecting all other consequences of any such condemnation or similar proceedings, or in compensation paid as a result thereof, not specifically provided for in this Section 14, shall be governed and determined by the laws of the State of Arizona in force at the time of the taking.

B. On and after the Determination Date, subparagraph 14.A. 1 and 2 and the first sentence of subparagraph 14.A. 3 shall remain in effect, but the remainder of paragraph 14.A. shall be superseded, and, except as expressly provided in such provisions which are not superseded, all compensation awarded on account of a taking of all or any part of the Leased Premises or any interest therein shall be accounted for and applied solely as provided in the Declaration.

15. Default.

A. The following provisions shall apply in the event of a breach of or default under this Lease prior to the Determination Date:

1. Any default by Lessee with respect to its obligations under this Lease shall, at the election of Lessor, after any applicable notice and grace period hereinafter provided, operate to terminate and forfeit

this Lease and determine its term, unless said default shall have been cured within said notice and grace period.

2. Forfeiture or termination of this Lease shall be in addition to other remedies now or hereafter provided by law (including specifically but not exclusively the remedy of injunction to prohibit any violation of the terms hereof or to require any performance for which Lessee is obligated hereunder), and no such forfeiture or termination shall prejudice the right of Lessor to pursue other actions or remedies now or hereafter provided by law.

3. In the event either of Lessor or Lessee shall commence legal action against the other on account of a breach of or default under any of the terms or conditions of this Lease by the other, the party prevailing in any such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount that the court may determine to be reasonable.

B. On and after the Determination Date, the foregoing provisions shall be superseded, and the Lessor may, in the event of a breach of or default under this Lease, after any applicable notice or grace period specified below, and if such breach or default is continuing, exercise any one or more of the following remedies, without further notice or delay except as may be required by law:

1. To expend such sums as may be required to correct such breach or default and charge Lessee therefor, without, however, curing such default or waiving any other remedy;

2. With or without taking possession of the Leasehold Estate, to require strict performance of

this Lease by means of an action for specific performance or for damages, or both; and

3. To re-enter the Leasehold Premises with or without process of law and repossess and enjoy or re-lease the same, subject nevertheless to the terms of this Lease, the Declaration and each and all of the Subleases, and Lessee shall remain liable for any damages incurred by reason of such breach or default, including without limitation attorneys' fees. If Lessor shall re-enter and repossess the Leased Premises as herein provided, Lessor shall, upon written notice to each Sublessee, be entitled to collect and receive Sublease rentals directly from such Sublessees, and Lessee hereby irrevocably appoints Lessor its attorney-in-fact coupled with an interest, with power of substitution, in the event Lessee is in default and after any applicable notice and grace period, to take in Lessee's name, but for the sole benefit of Lessor, any act which Lessee might take under the Subleases or any of them in Lessee's capacity as Sublessor thereunder.

16. Notice and Grace Periods. In the event of any breach of or default under this Lease or any of the Subleases, the following notice and grace periods shall apply:

A. If such breach or default be for the nonpayment or late payment of any monies, thirty (30) days after receipt of written notice by Lessee or such Sublessee;

B. If such breach of default be for any cause other than as provided in paragraph A, and if such breach or default is by its nature curable, thirty (30) days after receipt of written notice by Lessee or such Sublessee plus such additional time as may be required for Lessee or such Sublessee promptly to commence and thereafter diligently to continue to cure the same.

C. Any Mortgagee of this Lease or of any Sublease at the time of a default notice hereunder and which is entitled to receive a copy of such notice shall have sixty (60) days after expiration of the initial 30-day period following the default notice within which to effect a cure, if said default is monetary. If such default is non-monetary, such Mortgagee shall have sixty (60) days after expiration of the initial 30-day period following the default notice within which to cure such default, or, if such default cannot be cured within such period, but is reasonably curable, to commence to cure such default and to continue therewith with uninterrupted diligence until the cure shall have been completed. If it shall be necessary, in order to cure any such non-monetary default, for such Mortgagee to acquire possession of or title to the Leasehold or Subleasehold estate, said Mortgagee shall have such additional time as may be required to obtain such possession or title, provided it (i) proceeds with due diligence to foreclose or to take whatever action is reasonably required to obtain such title or possession and (ii) pays all rent for periods from and after the end of such sixty (60) day notice period.

17. Notices. All notices required or permitted hereunder shall be effective when mailed postage prepaid (and registered, certified or otherwise processed in a manner at the time most comparable to the presently provided certification) in the United States mail, addressed as follows:

If to Lessor, to

4602 North 24th Street  
Phoenix, AZ 85016

If to Lessee, to:

2211 East Highland, Suite 200  
Phoenix, Arizona 85016

OK 139518 105

If to any Sublessee, to his Unit.

If to any Mortgagee, to the address set forth  
in the Mortgage.

Any party may by notice to the Lessor and Lessee given as afore-  
said from time to time change its address for future notices  
hereunder.

18. Surrender. Upon the expiration of the term of  
this Lease, Lessee and all Sublessees and Mortgagees shall, upon  
payment of all sums due from Lessor on account of the improve-  
ments, peaceably surrender to Lessor possession of the Leased  
Premises and the improvements thereon and shall cause all persons  
or entities in possession of any part of the Leased Premises or  
improvements through their permission, sufferance or agreement  
to surrender the same to Lessor, unless Lessor shall theretofore  
have agreed in writing or shall then agree in writing that any  
such party may continue in possession of said premises or improve-  
ments for any period.

19. Performance of Lessee's and Sublessee's Obligations.  
In the event Lessee or any Sublessee shall fail (i) to make any  
payment required to prevent attachment of any lien or other  
charge to the Leased Premises or any part thereof or improvements  
thereon, or (ii) to pay when due the premium on any policy of  
insurance required to be maintained hereunder, or (iii) to make  
any repairs or alterations with reference to the Leased Premises  
or any part thereof or improvements thereon required by public  
authority, Lessor, or, in the case of Subleases, Lessee may at  
its sole option make any such payment or render any such perform-  
ance. In any such event, the party on whose behalf such perform-  
ance has been made shall reimburse the party rendering such per-  
formance for all sums so paid and for all expenses incurred in  
the rendition of any such performance forthwith upon demand.

together with interest thereon at the highest contract rate permitted by law from date of payment or expenditure to date of reimbursement.

20. Right of First Refusal. In the event that at any time during the term hereof, Lessor shall receive from any third party a bona fide offer to purchase Lessor's reversionary interest in the fee and Lessor's rights to or under this Lease, which offer Lessor intends to accept, Lessor shall give written notice of such offer to Lessee, and of Lessor's intention to accept the same, which notice shall specify in detail the terms of such offer. Provided that Lessee is not in default under the terms of this Lease, Lessor shall provide Lessee all such additional information concerning such offer as Lessee may reasonably request, and Lessee shall have the right for sixty (60) days after receiving such information to agree to purchase Lessor's reversionary interest in the fee at the price and on the terms contained in such offer. If Lessee fails to agree to purchase Lessor's reversionary interest in the fee within such sixty (60) day period, Lessor shall thereafter be free for thirty (30) days to agree to sell such reversionary fee interest and Lessor's rights under this Lease to the third party making the offer on the same terms and conditions set forth in such offer. If the reversionary fee is not sold to the party making the offer, or is sold and is subsequently offered for sale again by the Lessor's successors in interest, then Lessor shall again give Lessee the same right to purchase such reversionary interest in the fee upon receiving any subsequent or amended offer from any third party in the same manner as above set forth. Any purchaser of the reversionary fee interest from Lessor shall take title to the Leased Premises subject in all respects to this Lease, the Subleases, the Declaration, all Mortgages of record and all other matters to which Lessor was subject.

21. Designation of Parties. All reference herein to Lessor shall be deemed to include any successor of Lessor in ownership of the fee interest in the Leased Premises or any part thereof. All references herein to Lessee shall be deemed to include any assignee of Lessee or other party succeeding to this Lease in conformity with its terms. The provisions of this Lease shall extend to, inure to the benefit of and be binding upon the respective successors and assigns of Lessor and Lessee.

22. Captions. The captions preceding the sections of this Lease are for convenience only, and shall neither be considered a part of its terms nor be used in its interpretation.

23. Entire Agreement. This Lease expresses the entire agreement of Lessor and Lessee with reference to the subject matter hereof, and all prior representations by either party to the other and all prior commitments or understandings are hereby superseded in their entirety.

24. Severability. The terms and provisions of this Lease shall be severable for purposes of enforcement.

25. Modifications in Writing. Neither this lease nor any term or provision hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against which the enforcement thereof is sought.

26. Arizona Law. This Lease shall be governed by and construed and enforced in accordance with the substantive laws of the State of Arizona.

27. Exclusion from Existing Lease. This Lease is intended to, and does hereby, amend the existing lease covering the Leased Premises and certain additional property, which existing lease was dated August 10, 1962, between Lessor herein and Capital Company, a memorandum of which existing lease was recorded in Docket 4249 at page 480 in the office of the Recorder of



Maricopa County, Arizona, and amended by those certain Amendments to Lease dated December 23, 1968 and recorded in Docket 7420, at page 272, in the office of the Recorder of Maricopa County, Arizona, and dated July 15, 1972, and recorded in Docket 9576, at page 509 et seq. of such Records, respectively, by deleting entirely from said existing lease the Leased Premises, as herein defined, and by reducing the rentals payable under said existing Lease in the same proportion as the amount of land area thereby deleted from said existing lease bears to the total land area subject thereto immediately prior to this Amendment, as more specifically provided below.

A. Paragraph 1 of said existing lease is hereby amended to provide that the real property leased to Lessee by Lessor, which Lease takes and rents from Lessor upon the terms and conditions set forth in such Lease, is situate in the City of Phoenix, County of Maricopa, State of Arizona, and is more particularly described in Exhibit B attached to this Lease and incorporated herein by reference, and includes only the real property described in such Exhibit B.

B. Paragraph 3.B of said existing lease is hereby amended by changing the figure "\$8,481.00", in the eleventh line, to "\$1,169.00" and by changing the figure "\$5,815.00" in the twelfth line to "\$873.62".

C. All terms and conditions of said existing lease as heretofore amended are hereby ratified and affirmed and shall remain in full force and effect, except as herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

LESSOR:

ARIZONA EASTERN STAR HOME,  
an Arizona corporation

By *William S. Dunipace*  
Its President

By *Earline M. Carson*  
Its Secretary

LESSEE:

HIGHLAND BILTMORE PROPERTIES, LTD.,  
an Arizona limited partnership

By *[Signature]*  
Its General Partner

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa )

On this, the 27 day of July, 1979, before me, the undersigned Notary Public, personally appeared William S. Dunipace and Earline Carson who acknowledged themselves to be the President and Secretary, respectively, of ARIZONA EASTERN STAR HOME, an Arizona corporation, and that they, as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official



My Commission Expires:

7/18/82

*William S. Dunipace*  
Notary Public

STATE OF ARIZONA )  
                          ) ss.  
County of Maricopa )

On this, the 27<sup>th</sup> day of July, 1979, before me, the undersigned Notary Public, personally appeared Harold J. Leander, who acknowledged himself to be the General Partner of HIGHLAND BILTMORE PROPERTIES, LTD., a partnership, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official



Carroll Smith  
Notary Public

That part of the North half of the Southeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point on the South line of the North half of the Southeast quarter of the Northeast quarter of said Section 22, from which the Southwest corner of the North half of the Southeast quarter of the Northeast quarter of said Section 22 bears North 88 degrees 30 minutes 30 seconds West, a distance of 25.00 feet; run thence South 88 degrees 30 minutes 30 seconds East along the South line of the North half of the Southeast quarter of the Northeast quarter of said Section 22, a distance of 282.02 feet;

thence North 2 degrees 07 minutes 00 seconds East, parallel to the West line of the Southeast quarter of the Northeast quarter of said Section 22, a distance of 101.65 feet;

thence North 87 degrees 53 minutes 00 seconds West, a distance of 116.00 feet;

thence North 2 degrees 07 minutes 00 seconds East, a distance of 109.17 feet;

thence South 87 degrees 53 minutes 00 seconds East, a distance of 100.00 feet;

thence South 2 degrees 07 minutes 00 seconds West, a distance of 20.00 feet;

thence South 87 degrees 53 minutes 00 seconds East, a distance of 72.00 feet;

thence North 2 degrees 07 minutes 00 seconds East, a distance of 79.83 feet;

thence South 87 degrees 53 minutes 00 seconds East, a distance of 33.67 feet;

thence North 2 degrees 07 minutes 00 seconds East, a distance of 91.38 feet;

thence South 88 degrees 31 minutes 00 seconds East, parallel to the North line of the Southeast quarter of the Northeast quarter of said Section 22, a distance of 155.14 feet;

thence North 1 degree 29 minutes 00 seconds East, a distance of 299.00 feet to a point on the North line of the Southeast quarter of the Northeast quarter of said Section 22;

thence North 88 degrees 31 minutes 00 seconds West, along the North line of the Southeast quarter of the Northeast quarter of said Section 22, a distance of 267.02 feet;

thence South 1 degree 29 minutes 00 seconds West, a distance of 174.29 feet;

thence North 87 degrees 53 minutes 00 seconds West, a distance of 150.42 feet;

thence South 2 degrees 07 minutes 00 seconds West, a distance of 8.00 feet;

thence North 87 degrees 53 minutes 00 seconds West, a distance of 108.00 feet;

thence South 2 degrees 07 minutes 00 seconds West, parallel and 25.00 feet East of the West line of the Southeast quarter of the Northeast quarter of said Section 22, a distance of 480.57 feet to the point of beginning.

EXCEPT that portion of the above described parcel located within the following described parcel:

BEGINNING at the intersection of the North line of said Southeast quarter of the Northeast quarter with the West line of the East 40 feet thereof;  
thence Southerly along said West line to the South line of the North 55 feet of said Southeast quarter of the Northeast quarter;  
thence Northwesterly to the intersection of the West line of the East 55 feet of said Southeast quarter of the Northeast quarter with the South line of the North 40 feet thereof;  
thence Westerly along said South line to the East line of the West 43 feet of said Southeast quarter of the Northeast quarter;  
thence Southwesterly to the intersection of the South line of the North 50 feet of said Southeast quarter of the Northeast quarter with the East line of the West 33 feet thereof;  
thence Southerly to the intersection of the South line of the North 243 feet of said Southeast quarter of the Northeast quarter with the East line of the West 25 feet thereof;  
thence Northerly along said East line to the North line of said Southeast quarter of the Northeast quarter;  
thence Easterly along said North line to the point of beginning; and

EXCEPT that portion of the above described parcel located within the following described parcel:

The West 25 feet of the North half of the Southeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian.

EXHIBIT B

That part of the North half of the Southeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the Northwest corner of the Southeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian; thence South 88 degrees 31 minutes 00 seconds East along the North line of the Southeast quarter of the Northeast quarter of said Section 22 a distance of 258.42 feet; thence South 1 degree 29 minutes 00 seconds West, a distance of 174.29 feet; thence North 87 degrees 53 minutes 00 seconds West, a distance of 150.42 feet; thence South 2 degrees 07 minutes 00 seconds West, a distance of 8.00 feet; thence North 87 degrees 53 minutes 00 seconds West, a distance of 133.00 feet to the West line of the Southeast quarter of the Northeast quarter of said Section 22; thence North 2 degrees 07 minutes 00 seconds East along said West line to the point of beginning.

EXCEPT that portion of the above described parcel located within the following described parcel:

BEGINNING at the intersection of the North line of said Southeast quarter of the Northeast quarter with the West line of the East 40 feet thereof; thence Southerly along said West line to the South line of the North 55 feet of said Southeast quarter of the Northeast quarter; thence Northwesterly to the intersection of the West line of the East 55 feet of said Southeast quarter of the Northeast quarter with the South line of the North 40 feet thereof; thence Westerly along said South line to the East line of the West 43 feet of said Southeast quarter of the Northeast quarter; thence Southwesterly to the intersection of the South line of the North 50 feet of said Southeast quarter of the Northeast quarter with the East line of the West 43 feet thereof; thence Southerly to the intersection of the South line of the North 243 feet of said Southeast quarter of the Northeast quarter with the East line of the West 43 feet thereof; thence Northerly along said East line to the North line of said Southeast quarter of the Northeast quarter; thence Easterly along said North line to the point of beginning; and

EXCEPT that portion of the above described parcel located within the following described parcel:

The West 25 feet of the North half of the Southeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian.

13951 114



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STATE OF ARIZONA }  
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of  
JENNINGS, STROUSS & SALMON

in Docket 13951  
on page 77-114

Witness my hand and official seal the day and year aforesaid.

*Bill Henry*

By *K. B. ...* County Recorder  
Deputy Recorder

1900





STATE OF ARIZONA        )  
                                  ) ss.  
County \_\_\_\_\_ )

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_,  
personally appeared \_\_\_\_\_, the  
\_\_\_\_\_ of TOWN AND COUNTRY CONDOMINIUMS, INC., an  
Arizona corporation, whose name is subscribed to the foregoing  
instrument, and acknowledged that he executed the same in such  
capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

STATE OF ARIZONA        )  
                                  ) ss.  
County of \_\_\_\_\_ )

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_,  
personally appeared \_\_\_\_\_,  
general partner of HIGHLAND BILTMORE PROPERTIES, LTD., a  
limited partnership, whose name is subscribed to the foregoing  
instrument, and acknowledged that he executed the same in such  
capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_



MASTER SUBLEASE

THIS MASTER SUBLEASE, made this 10th day of November, 1980, by and between TOWN AND COUNTRY OWNERS' ASSOCIATION, an Arizona nonprofit corporation (hereinafter sometimes called "Sublessor"), and TOWN AND COUNTRY CONDOMINIUMS, INC., an Arizona corporation (hereinafter sometimes called "Sublessee"),

W I T N E S S E T H:

WHEREAS, Sublessor is the current Lessee under a Lease (the "Lease") dated as of July 27, 1979, and recorded at Docket 13951, page 78 et seq., records of Maricopa County, Arizona, originally entered into by and between Arizona Eastern Star Home, an Arizona corporation, as Lessor, and Highland Biltmore Properties, Ltd., a limited partnership, as Lessee, which Lease has been assigned to Town and Country Condominiums, Inc. and by such corporation to Sublessor; and

WHEREAS, at the same time, all of the interest and title in and to the improvements on such property has been assigned and conveyed along with such leasehold interest and estate to Sublessor; and

WHEREAS, prior to the assignment of the Lease from said Town and Country Condominiums, Inc. to Sublessor, said Town and Country Condominiums, Inc. caused to be recorded with respect to such property at Docket 14138, page 811 et seq., records of Maricopa County Arizona, a Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for Town and Country Biltmore Townhomes (which Declaration, as from time to time amended and in effect, is hereinafter called the "Declaration") and caused Sublessor to be formed as and for the Council of Co-Owners of such horizontal property regime.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements hereinafter contained, the parties hereto have agreed and hereby agree as follows:

1. Definitions. Terms used herein shall have the same respective meanings as in the Declaration, unless otherwise expressly provided or required by context.

2. Sublease of Units. Sublessor hereby subleases to Sublessee, and Sublessee hereby takes and rents from Sublessor, each and all of the Units, being Units One (1) through Sixty-One (61), inclusive, as defined in the Declaration, including the appurtenant interests in the Common Elements and all other privileges, amenities, memberships and other rights of every nature and description belonging or appurtenant to such Units and to the Owners, Mortgagees, residents and tenants and the guests, agents, licensees and invitees thereof. This Master Sublease is a Sublease of each of the Units separately, and the Sublessee, its successors and assigns may, in accordance with the terms of this Sublease, and subject to the covenants, restrictions, easements, duties, liabilities, liens and encumbrances and all other terms and provisions hereof, separately sell, assign and convey the Subleasehold interest and estate to each of such Units to successive Sublessees by instrument of Assignment and Assumption of Sublease of the form attached to this Sublease as Exhibit A or in such other form as Sublessor may from time to time expressly approve in writing as being adequate unconditionally and irrevocably to assign and convey the entire Subleasehold interest and estate to such Unit. Upon such assignment and assumption of each Unit as herein provided, the assignee shall become the Sublessee of such Unit and shall be entitled to all of the rights, privileges and powers, and be subject to all of the duties, restrictions, liabilities and all other

terms and provisions hereof, and the assigning Sublessee shall be released and discharged of all such rights, privileges, powers, duties, restrictions, liabilities and all other terms and provisions hereof arising after the time of such assignment and assumption. Any assignment, mortgage, conveyance, transfer or other disposition of any Subleasehold or any interest or estate therein other than pursuant to such an approved instrument of assignment and assumption shall not be effective to render the assignee, mortgagee, transferee or other person acquiring such interest a Sublessee or Owner hereunder or under the Declaration or to relieve the Sublessee of any duty or liability hereunder; provided, however, that nothing herein shall prevent any First Mortgagee, as such term is defined in the Declaration, from succeeding to the position of a Sublessee hereunder or from selling the entire Subleasehold interest and estate through the exercise of any remedy provided in its Mortgage.

3. Incorporation of Terms. Reference is hereby made to the Declaration, the Lease and the Articles of Incorporation, By-Laws, and rules and regulations of TOWN AND COUNTRY OWNERS' ASSOCIATION, as the same may be amended from time to time, all of which are hereby incorporated fully herein by this reference and shall constitute terms, conditions and provisions of this Master Sublease, as if set forth in full herein, mutatis mutandi. Sublessee shall comply fully with the applicable provisions of all such instruments.

4. Term. This Sublease shall expire concurrently with the expiration of the Lease as therein provided or as extended from time to time. As provided in Sections 11.B.13 and 15.B.2 of the Lease, the termination of the Lease prior to its expiration date shall not operate to terminate this Sublease or any right, title, interest or estate of any Sublessee hereunder.

5. Rent. The total rental payable for the Sublease of all of the Units shall equal the total rental payable by the Lessee under the Lease. After the initial full sale rental is payable under the Lease, as provided in paragraph 4.B.1 thereof, the rental payable under each Sublease shall be equal to the same portion of the total rental due under the Lease, as adjusted from time to time, as the percentage interest in the Common Elements which is appurtenant to such Unit, as provided in the Declaration.

Until the initial full sale rental is payable under the Lease, the rental payable under each Sublease shall be determined as follows. Town and Country Condominiums, Inc. or its successors or assigns in the initial development and sale of the Leased Premises (as defined in the Lease) shall pay the sum of Seven Dollars and Fifty-four Cents (\$7.54) per month for each Unit of which it is the Sublessee. The rental payable under each other Sublease shall be equal to the same portion of the remainder of the total rental then due under the Lease, after subtracting the payments to be made by Town and Country Condominiums, Inc. or its successors or assigns in the initial development and sale of such Leased Premises, as above provided, as the percentage interest in the Common Elements appurtenant to such Unit bears to the sum of the percentage interests in the Common Elements appurtenant to all the Units of which said Town and Country Condominiums, Inc., or its successors or assigns in the initial development and sale of such Leased Premises, is not then the Sublessee.

All such rentals shall be payable monthly so far in advance as is determined by Sublessor to be necessary to permit it to make rental payments under the Lease in a timely fashion, but not more than six (6) nor less than one (1) month in advance. Sublessor in its discretion may also require

each Sublessee to deposit in advance, as a security deposit, in addition to any deposit which may be required on account of Common Expenses, such amount as Sublessor may determine to be appropriate, not to exceed six (6) months' rental, to assure that it will be able to make rental payments under the Lease in a timely fashion.

6. Utilities, Taxes and Improvements. The Sublessee of each Unit shall pay directly to the supplier thereof all sums due on account of utilities used or consumed or other services furnished to or in such Unit, shall pay when due all property or other taxes, assessments and impositions payable on account of such Unit or its appurtenant interests in the Common Elements and shall be solely responsible for the cost of all improvements made to such Unit or any part thereof. Notice is hereby given that Sublessees are not authorized to permit any work to be performed or improvements to be made to the Common Elements or to permit any lien to attach thereto for materials supplied, work performed or otherwise. Each Sublessee shall have the right at its own expense to protest, contest or otherwise seek the reduction of any such taxes, assessments or impositions, and when necessary or desirable, to do so in the name of the Lessor under the Lease, the Sublessor or in its own name.

7. Title to Improvements. Upon the expiration of this Master Sublease, the Sublease of each Unit shall expire and title to all improvements constituting part of TOWN AND COUNTRY BILTMORE TOWNHOMES, including the Units and those improvements which constitute part of any Unit or Units, Common Elements or otherwise, shall automatically vest in the Lessor under the Lease without payment by the Lessor of any compensation whatsoever therefor and shall thereafter be free and clear of any claim or interest of any Sublessee or any

person whose position was derived from or through any Sublessee, except the lien of any mortgage or deed of trust which is permitted to continue after such expiration in accordance with the terms of the Lease. Nothing herein shall prevent any Sublessee from removing prior to such expiration any furniture, furnishings, appliances, equipment, improvements and installations belonging to Sublessee which are not part of the integral structure of any improvement and which can be removed without unreasonable or irreparable damage thereto. Any damage to any improvement caused by any such removal shall, however, be promptly and wholly repaired and restored at the sole expense of the Sublessee removing the same.

8. Events of Default; Remedies. Any breach of, failure to comply with or default under the terms of this Master Sublease, the Lease, the Declaration or the Articles of Incorporation, By-Laws or rules and regulations of TOWN AND COUNTRY OWNERS' ASSOCIATION by any Sublessee shall constitute a default by such Sublessee of the Sublease of the Unit or Units as to which such default occurred, and, after any applicable notice or grace period, and if such breach or default is continuing, Sublessor shall be entitled to exercise any remedy provided in any such document for such breach, failure to comply or default, without further notice or delay except as may be required by such document or by law. Without limiting the foregoing, the Sublessor may, in the event of a breach or default, after any applicable notice or grace period specified below, and if such breach or default is continuing, exercise any one of more of the following remedies with respect to the particular Sublessee and Unit, without further notice or delay except as may be required by law:



1. To expend such sums as may be required to correct such breach or default and charge the Sublessee therefor, without, however, curing such default or waiving any other remedy;

2. With or without taking possession of the Subleasehold estate, to require strict performance of this Sublease by means of an action for specific performance or for damages, or both; and

3. To re-enter the Subleasehold premises with or without process of law and repossess and enjoy or re-Sublease the same, subject nevertheless to the terms of this Master Sublease, the Lease, the Declaration and the Articles of Incorporation, By-Laws and rules and regulations of TOWN AND COUNTRY OWNERS' ASSOCIATION, and Sublessee shall remain liable for any damages incurred by reason of such breach or default, including without limitation attorneys' fees.

9. Notice and Grace Periods. In the event of any breach of or default by any Sublessee, the following notice and grace periods shall apply:

A. If such breach or default be for the non-payment or late payment of any monies, thirty (30) days after receipt of written notice by such Sublessee;

B. If such breach or default be for any cause other than provided in Paragraph A, and if such breach or default is by its nature curable, thirty (30) days after receipt of written notice by such Sublessee plus such additional time as may be required to cure the same, provided such Sublessee promptly commences and thereafter continues with uninterrupted diligence to cure the same;

C. Any First Mortgagee of any Sublease at the time of a default notice hereunder which is entitled to receive a copy of such notice shall have sixty (60) days after expiration of the initial 30-day period following the default notice within which to effect a cure, if said default is monetary. If such default is non-monetary, such First Mortgagee shall have sixty (60) days after expiration of the initial 30-day period following the default notice within which to cure such default, or, if such default cannot be cured within such period, but is reasonably curable, to commence to cure such default and to continue therewith with uninterrupted diligence until the cure shall have been completed. If it shall be necessary, in order to cure any such non-monetary default, for such First Mortgagee to acquire possession of or title to the Subleasehold estate, said Mortgagee shall have such additional time as may be required to obtain such possession or title, provided it (i) proceeds with due diligence to foreclose or to take whatever action is reasonably required to obtain such title or possession and (ii) pays all rent for periods from and after the end of such sixty (60) day notice period. Nothing herein shall be deemed to require any First Mortgagee to cure any default which First Mortgagees are excused from curing under the Lease or the Declaration, including without limitation the obligation to pay Rental or Common Expenses which accrue prior to the time when such First Mortgagee acquires the Subleasehold estate to or comes into possession of the applicable Unit)

D. The notice and grace periods provided herein shall run concurrently and not cumulatively with any notice and grace period which might be applicable thereto under any other document or instrument.

10. Notices. All notices required or permitted hereunder shall be effective when mailed postage prepaid (and registered, certified or otherwise processed in a manner at the time most comparable to the presently provided certification) in the United States mail, addressed as follows:

If to Sublessor, to the address where payments of Sublease rentals are then addressed; and

If to any Sublessee, to such Sublessee's Unit.

If to any Mortgagee, to the address set forth in the Mortgage.

Any party may by written notice change its address for future notices hereunder.

11. Surrender. Upon the expiration of the term of this Sublease, all Sublessees and Mortgagees shall peaceably surrender possession of the Subleased premises and the improvements thereon and shall cause all persons or entities in possession of any part of the Subleased premises or improvements through their permission, sufferance or agreement to surrender the same, unless the Lessor under the Lease shall have agreed in writing that any such party may continue in possession of said premises or improvements for any additional period.

12. Designation of Parties. All reference herein to Sublessor, Sublessee or any other party shall be deemed to include any successor or permitted assignee of such party. The provisions of this Sublease shall extend to, inure to the benefit of and be binding upon the respective successors and assigns of Sublessor and Sublessee.

13. Captions. The captions preceeding the sections of this Sublease are for convenience only, and shall neither

be considered a part of its terms nor be used in its interpretation.

14. Severability. The terms and provisions of this Sublease shall be severable for purposes of enforcement.

15. Modifications in Writing. Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against which the enforcement thereof is sought; provided, however, that if the Lease, the Declaration or the Articles of Incorporation, By-Laws or rules and regulations of TOWN AND COUNTRY OWNERS' ASSOCIATION should be duly amended in accordance with the terms thereof, or as permitted by law, such amendment shall also be deemed an amendment of this Sublease to the extent that such instrument or document, as amended from time to time, has been incorporated herein pursuant to paragraph 3 hereof.

16. Arizona Law. This agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Arizona.

IN WITNESS WHEREOF, the parties hereto have caused this Master Sublease to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

SUBLESSOR:

TOWN AND COUNTRY OWNERS' ASSOCIATION

By [Signature]  
Its President

By [Signature]  
Its Secretary

SUBLESEE:

TOWN AND COUNTRY CONDOMINIUMS, INC.

By [Signature]  
Its ACC.

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this, the 10<sup>th</sup> day of November, 1980,  
before me, the undersigned Notary Public, personally appeared  
Robert Leander and Richard C. Wittes  
who acknowledged themselves to be the President and Secretary,  
respectively, of TOWN AND COUNTRY OWNERS' ASSOCIATION, an  
Arizona non-profit corporation, and that they, as such officers,  
being authorized so to do, executed the foregoing instrument  
for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and  
official seal.

Coralia A. Bradshaw  
Notary Public

My Commission Expires:

3-9-81

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STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this the 10<sup>th</sup> day of November, 1980,  
before me, the undersigned Notary Public, personally appeared  
Robert Leander who acknowledged himself  
to be the President of TOWN AND COUNTRY CONDOMINIUMS,  
INC., an Arizona corporation, and that he, being authorized  
so to do, executed the foregoing instrument for the purposes  
therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and  
official seal.

Coralia A. Bradshaw  
Notary Public

My Commission Expires:

3-9-81

TOWN AND COUNTRY BILTMORE TOWNHOMES  
ASSIGNMENT AND ASSUMPTION OF SUBLEASE

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00), and other valuable considerations, TOWN AND COUNTRY CONDOMINIUMS, INC., an Arizona corporation (hereinafter called "Assignor"), does hereby irrevocably bargain, grant, sell, convey, transfer and assign unto \_\_\_\_\_ (hereinafter called the "Assignee"), its successors and assigns forever, the entire Subleasehold interest and estate in and to the following property situated in Maricopa County, Arizona, to-wit:

Unit \_\_\_\_\_, TOWN AND COUNTRY BILTMORE TOWNHOMES, a horizontal property regime according to Declaration recorded at Docket \_\_\_\_\_, page \_\_\_\_\_, records of Maricopa County, Arizona,

together with an undivided interest in the Common Elements of said horizontal property regime and all rights, privileges and easements appurtenant thereto, subject to all taxes, assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, liabilities, interests and other matters as may appear of record.

Assignee hereby agrees to pay and perform all covenants, conditions, stipulations and obligations arising under the Lease recorded at Docket \_\_\_\_\_, page \_\_\_\_\_, records of Maricopa County, Arizona, the Sublease recorded at Docket \_\_\_\_\_, page \_\_\_\_\_ of such records, the above-described Declaration, the Articles of Incorporation, by-Laws and Rules and Regulations of Town and Country Owners' Association, as any of the same may be amended and in effect from time to time, and all other covenants, conditions, stipulations and obligations of any kind relating to said Unit.

Pursuant to the terms of the above-described Lease, Sublease and Declaration, Assignor is hereby released, revised and forever discharged from any and all covenants, conditions, stipulations and obligations which it might have had as Sublessee of the above-described Unit.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ASSIGNOR:

ASSIGNEE:

TOWN AND COUNTRY CONDOMINIUMS, INC., an Arizona corporation

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
County of \_\_\_\_\_ )

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
personally appeared \_\_\_\_\_  
of TOWN AND COUNTRY CONDOMINIUMS, INC., an Arizona  
corporation, whose name is subscribed to the foregoing instru-  
ment, and acknowledged that he executed the same in such  
capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
personally appeared \_\_\_\_\_  
whose name is subscribed to the foregoing instrument, and  
acknowledged that he executed the same for the purposes  
therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

DEC 31 1980 - 3 22

STATE OF ARIZONA }  
County of Maricopa } ss.  
I hereby certify that the with-  
in instrument was filed and re-  
corded at request of  
TITLE COMPANY OF ARIZONA

In Docket . . . 14927  
on Page 1263-1275

Witness my hand and official  
seal the day and year hereinaid.

By \_\_\_\_\_  
County Recorder  
Deputy Recorder





When recorded, return to:

Bruce Washburn, Esq.  
Ayers & Brown, P.C.  
4227 N. 32nd Street  
Phoenix, Arizona 85018

copy

## SECOND AMENDMENT TO LEASE

(Biltmore Gardens Condominiums; Phoenix, Arizona)

**THIS SECOND AMENDMENT TO LEASE** (this "Second Amendment") is made and entered into effective as of the 1st day of January, 2001, by and between **ARIZONA EASTERN STAR RETIREMENT CENTER**, an Arizona corporation, formerly known as Arizona Eastern Star Home, an Arizona corporation, as lessor ("Lessor"), and **BILTMORE GARDENS HOMEOWNERS ASSOCIATION**, an Arizona non-profit corporation, formerly known as Town and Country Owners' Association, as lessee ("Lessee"), successor-in-interest by assignment and assumption to Highland Biltmore Properties, Ltd., an Arizona limited partnership ("Highland"), and Town and Country Condominiums, Inc., an Arizona corporation.

### RECITALS:

A. The Second Amendment is entered into in consideration of the mutual promises, covenants and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged by the parties.

B. Lessor and Highland entered into that certain Lease and Exhibits A and B thereto dated July 27, 1979, recorded October 9, 1979 at Docket 13951, pages 77-114, in the Official Records of Maricopa County, Arizona, as amended by that certain First Amendment to Lease entered into January 14, 2000 and recorded May 31, 2000 at record number 00-0411964 of said Official Records (collectively, the "Lease"), pertaining to that certain development generally located at the southeast corner of 22nd Street and Highland Avenue in Phoenix, Arizona consisting of the project currently known as the "Biltmore Gardens Condominiums".

C. Pursuant to various recorded and/or unrecorded assignments and assumptions of the Lease, Lessee is currently the "Lessee" (as defined in the Lease) under the Lease.

D. The parties desire to revise certain provisions of the Lease as hereinafter set forth.

E. Capitalized terms used in this Second Amendment without definition shall have the meanings given to such terms in the Lease.

LESSEE:

copy

BILTMORE GARDENS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, formerly known as Town and Country Owners Association, an Arizona nonprofit corporation

By: [Signature]  
Name: RICHARD PRESTO  
Title: President

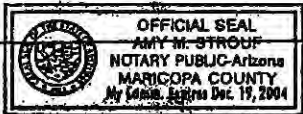
By: [Signature]  
Name: Joan Spadoni  
Title: Secretary

STATE OF ARIZONA )  
County of Pinal ) ss.

The foregoing instrument was acknowledged before me this 7 day of August, 2001, by Richard Presto, as President of Arizona Eastern Star Retirement Center, an Arizona corporation, for and on behalf of the corporation.

[Signature]  
Notary Public

My Commission Expires:



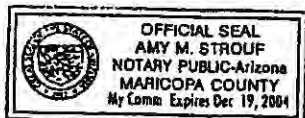
STATE OF ARIZONA )  
County of Pinal ) ss.

The foregoing instrument was acknowledged before me this 7 day of August, 2001, by Joan Spadoni, as Secretary of Arizona Eastern Star Retirement Center, an Arizona corporation, for and on behalf of the corporation.

[Signature]  
Notary Public

[Signature]  
8-6-01

My Commission Expires:



cel 7

**AGREEMENTS:**

1. Article 4(B)(3) is amended by adding the following provision:

The forgoing notwithstanding, for the five (5) year period beginning January 1, 2001 and ending December 31, 2005, the rent shall be adjusted effective January 1 of each year by increasing 8.2 percent over the preceding year's rent. The rent for calendar year 2001, after making the adjustments set forth above, shall be in the amount of \$47,275.78.

2. As of end of calendar year 2005, and as of the end of each five (5) year period thereafter, the rent payable hereunder shall be subject to adjustment in the same manner as set forth in Article 4(B)(3) for the periods preceding the adoption of this Second Amendment.

3. Ratification. It is understood and agreed that the Lease is ratified, confirmed and in full force and effect, and has not been modified, supplemented or amended in any way except as herein provided. In the event of any inconsistency between the terms of the Lease and this Second Amendment, the terms of this Second Amendment shall prevail. All references in the Lease to "this Lease" shall be deemed references to the Lease as modified by the Second Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment effective on the date first written above.

LESSOR:

ARIZONA EASTERN STAR RETIREMENT CENTER, an Arizona corporation, formerly known as Arizona Eastern Star Home, an Arizona corporation

By: [Signature]  
Name: RICHARD BERTS  
Title: President

*Void*

By: [Signature]  
Name: Joan Spadoni  
Title: Secretary

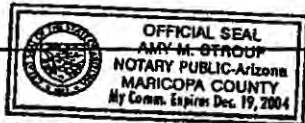
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STATE OF ARIZONA )  
 ) ss.  
County of Pinal )

The foregoing instrument was acknowledged before me this 7 day of August, 2001, by Richard Presto, as President of Biltmore Gardens Homeowners Association, an Arizona non-profit corporation, for and on behalf of the corporation.

Amy M. Strouf  
Notary Public

My Commission Expires:



STATE OF ARIZONA )  
 ) ss.  
County of Pinal )

The foregoing instrument was acknowledged before me this 7 day of August, 2001, by Jean Spadoni, as Secretary of Biltmore Gardens Homeowners Association, an Arizona non-profit corporation, for and on behalf of the corporation.

Amy M. Strouf  
Notary Public

My Commission Expires:

