

LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made as of this 13th day of December, 1976, by and between W. J. SMALL and HAZEL M. SMALL, his wife, (collectively referred to hereinafter as "Lessor"), and THE BRIARWOOD CORPORATION, an Arizona corporation (referred to hereinafter as "Lessee"),

WITNESSETH:

WHEREAS, Lessor is the true and lawful owner of the premises, as hereinafter described, and has the right to lease the same in the manner set forth in this Lease Agreement; and

WHEREAS, Lessor desires to lease said premises and Lessee desires to obtain such lease on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the rents to be paid and the covenants, conditions, and agreements to be performed by the Lessee and the Lessor, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Description: Lessor hereby leases and permits the use to Lessee, and Lessee hereby leased from Lessor, the following described real property with all easements and appurtenances and rights related thereto, all of which shall hereinafter be referred to as the premises or the lease premises, being a portion of the W 1/2, SW 1/4, Sec. 11, T.2N., R.4E., G.&S.R.B.&M, Maricopa County, Arizona, more particularly described as follows:

Commencing at the S.E. corner of the said W 1/2, SW 1/4, Sec. 11; thence NO° 33'33"W, an assumed bearing along the East line of the said W 1/2, SW 1/4, Sec. 11 for a distance of 1300.09' to the true point of beginning; thence S89°30'36"W, along the north line of Briarwood II Subdivision, as recorded in Bk. 172, pg. 17, M.C.R., Maricopa County, Arizona, for a distance of 770.00 ft.; thence NO°33'33"W for a distance of 675.98 ft.; thence N89°30'36"E., along the south line of the Hilton Casitas Subdivision as recorded in Bk. 149, pg. 49, M.C.R., Maricopa County, Arizona, for a distance of 770.00 ft; thence SO°33'33"E., along the said East line of the W 1/2, SW 1/4, Sec. 11, for a distance of 675.98 ft., to the True Point of Beginning.

Containing an area of 11.95 acres more or less;
all in and for the consideration of, and upon and subject to the terms, conditions and undertaking hereinafter set forth.
Lessor covenants that, subject to the provisions of this Lease and the performance of the obligations to be performed by Lessee hereunder, Lessee shall lawfully and quietly hold, occupy and enjoy its estate in the premises by virtue of this Lease during its entire term.

2. Term: The term of this Lease shall be for a period of approximately ninety-nine (99) years, commencing on the 1st day of October, 1976, at 12:01 A.M., and continuing to 11:59 P.M. on the 30th day of September, 2075, subject to the terms and conditions set forth in this Lease.

3. Use of Leased Premises; Buildings and Improvements;
Repairs:

(a) Use of the Leased premises may be for any lawful purpose or purposes permitted under applicable zoning or use ordinances and regulations consistent with the highest and best use of the leased premises in the discretion of the Lessee, and uses incidental thereto.

(b) Lessee may, at its cost and expense and in

such manner as it may determine at any time or times improve, construct, demolish, remodel, reconstruct, alter or remove improvements, structures, and buildings on the lease premises. Lessee covenants that any such improvements, structures or building shall conform to all applicable building codes, zoning and other governmental regulations and restrictions and shall be constructed in good, workmanlike manner of good material and in full compliance with all governmental laws, rules and regulations then relating thereto. Lessee agrees to indemnify and hold harmless Lessor from and against any and all valid claims for damages on the part of the owners, tenants, or occupants of adjacent lands or buildings arising from the construction of such improvements, structures or buildings and any additions or repairs or replacements thereto, and Lessee agrees to take the necessary and proper measures to protect the land and improvements of such adjacent owners, tenants and occupants from injury of any nature arising from such construction.

(c) The parties agree, and notice is hereby given, that Lessee is not the agent of Lessor for the construction, alteration or repair of any improvements on the lease premises, the same being done at the sole expense of Lessee, and all contractors, materialmen, mechanics, and laborers are hereby charged with notice that they must look only to Lessee, or, where applicable, to any subtenant, for the payment of any charge for work done or material furnished on the leased premises

during the term of this Lease. Lessee shall have no right, authority or power to bind Lessor or any interest of Lessor for the payment of any claim for labor or material, or for any charge or expense incurred by Lessee or any subtenant of Lessee as to improvements or repairs on or to the premises and/or existing improvements. Lessee shall hold harmless and indemnify Lessor from or against any costs, expenses and liabilities from any mechanics', laborers' or materialmen's liens which may be filed against the premises during the term of this Lease. Lessee shall have the right to contest any such liens in the name of Lessor as Lessee may deem necessary; provided, however, that the expenses incurred by reason thereof shall be paid by Lessee.

(d) Upon the expiration of the term of this Lease, Lessee shall surrender peaceable possession of the leased premises, and all buildings and improvements and fixtures then located therein (if any), all of which shall thereupon be and become the property of Lessor, subject, however, to the rights of removal as provided in paragraph 18, Lessee shall, at its cost and expense, during the term of this Lease, keep the structures and buildings constructed thereon and any other improvements located from time to time thereon in good condition and state of repair, ordinary depreciation and reasonable

wear and tear excepted, and will hold Lessor free and harmless of and from expense and liability therefor.

4. Rental. Lessee shall pay to Lessor at the address shown in paragraph 21, except as herein specifically set forth in paragraph 4(a), as rent during the term hereof, the following sums:

(a) From the commencement date of this Lease until December 31, 1976, Lessee shall pay no rent.

(b) Subject to adjustments hereinafter mentioned, the net monthly rent from January 1, 1977 for the balance of the term of this Lease shall be \$3,186.67, payable monthly in advance.

(c) The net annual rental for the time period commencing on January 1, 2009, and extending for a term of thirty-three (33) years up to and including December 31, 2042, will be computed in the following manner:

(i) The then current market value of the premises previously described herein in paragraph 1, as of January 1, 2008, exclusive of all buildings, fixtures, and any other improvements thereon of whatever nature or kind, will be agreed to

by Lessor and Lessee not later than April 1, 2008. For the purpose of this paragraph 4(c)(i), the term "then current market value" shall mean the then market value of the premises, exclusive of all buildings, fixtures and any other improvements thereon of whatever nature or kind, for the purpose of a sale thereof as if any such buildings, fixtures or other improvements were not located thereon, with the premises to be used for the same purpose as that purpose for which the property is then being used by Lessee. Not later than February 1, 2008, Lessor shall submit to Lessee a Statement of Value of the premises as defined herein. Lessee shall, on or before March 1, 2008, notify Lessor that Lessee either accepts Lessor's Statement of Value or that Lessee disagrees with said Statement of Value, in which case Lessee shall submit to Lessor Lessee's Statement of Value. If Lessee has accepted Lessor's original Statement of Value, that value shall be the value of the premises for use in computing the rent due pursuant to paragraph 4(c)(ii). If Lessee has disagreed with Lessor's Statement of Value and submitted to Lessor Lessee's Statement of Value, Lessor shall notify Lessee not later than April 1, 2008, either that Lessor agrees with Lessee's Statement of Value or that Lessor disagrees with same. If Lessor accepts Lessee's Statement of Value, that value shall be used for the purpose of determining the rent due to paragraph 4(c)(ii).

If Lessor disagrees with Lessee's Statement of Value, or fails to notify Lessee of Lessor's position with respect to this matter prior to April 1, 2008, Lessor and Lessee shall promptly resolve the matter of the value of the premises by arbitration, in the manner provided for in paragraph 5 hereinafter.

(ii) The net annual rental for the time period commencing on January 1, 2009, up to and including December 31, 2042, shall be (1) \$38,240.00, or (2) a sum equal to eight percent (8%) of the value of the premises covered by this Lease as determined in accordance with paragraph 4(c)(i) above, whichever is greater. Payments of rent during the thirty-three (33) year period recited in this paragraph 4(c)(ii) shall be made on an equal monthly basis, on the 1st day of each month.

(d) The net annual rental for the time period commencing on January 1, 2043, and extending for a period of thirty-two years nine months, up to and including September 30, 2075, will be computed in the following manner:

(i) The then current market value of the premises previously described herein in paragraph 1, as of January 1, 2041, exclusive of all buildings, fixtures and any other improvements thereon of whatever nature or kind, will be agreed to by Lessor and Lessee not later than April 1, 2041. For the purpose of this paragraph 4(d)(i), the term "then current market value" shall mean

the then market value of the premises, exclusive of all buildings, fixtures, and any other improvements thereon of whatever nature or kind, for the purpose of a sale thereof as if any such buildings, fixtures or other improvements were not located thereon, with the premises to be used for the same purpose as that purpose for which the property is then being used by Lessee. Not later than February 1, 2041, Lessor shall submit to Lessee a Statement of Value of the premises as defined herein. Lessee shall, on or before March 1, 2041, notify Lessor that Lessee either accepts Lessor's Statement of Value or that Lessee disagrees with said Statement of Value, in which case Lessee shall submit to Lessor Lessee's Statement of Value. If Lessee has accepted Lessor's original Statement of Value, that value shall be the value of the premises for use in computing the rent due pursuant to paragraph 4(d)(ii). If Lessee has disagreed with Lessor's Statement of Value and submitted to Lessor Lessee's Statement of Value, Lessor shall notify Lessee not later than April 1, 2041, either that Lessor agrees with Lessee's Statement of Value or that Lessor disagrees with same. If Lessor accepts Lessee's Statement of Value, that value shall be used for the purpose of determining the rent due pursuant to paragraph 4(d)(ii). If Lessor disagrees with

Lessee's Statement of Value, or fails to notify Lessee of Lessor's position with respect to this matter prior to April 1, 2041, Lessor and Lessee shall promptly resolve the matter of the value of the premises by arbitration, in the manner provided for in paragraph 5 hereinafter.

(ii) The net annual rental for the time period commencing on January 1, 2042, up to and including September 30, 2075, shall be (1) the rate per annum payable during the year January 1, 2041, up to and including December 31, 2041; or (2) a sum equal to eight percent (8%) of the value of the premises covered by this Lease as determined in accordance with paragraph 4(d)(i) above, whichever is greater. Payments of rent during the thirty-two year nine month period recited in this paragraph 4(d)(ii) shall be made on an equal monthly basis, on the first (1st) day of each month.

5. Appraisal and Arbitration: Lessor and Lessee agree that the market value of the lease premises for the purpose of determining rent under paragraph 4 shall, in the event of disagreement on the matter, be determined by the Lessor appointing an appraiser, the Lessee appointing an appraiser, and the two appraisers so appointed appointing a third. A decision of the majority of the appraisers as to the market value, as defined above in paragraph 4(c)(i) and paragraph 4(d)(i), of said premises as of the appropriate date or dates shall be final and binding upon the parties hereto. All appraisers herein provided for to be selected shall be members of the American

Institute of Real Estate Appraisers, or a successor organization or comparable organization of like type and standing.

In the event that for any reason the parties are unable to determine the value of the lease premises by the manner hereinabove set forth on or before July 1, 2008, or July 1, 2041, whichever is the applicable date, the parties shall submit the issue to be determined to arbitration in accordance with the rules then obtaining of the American Arbitration Association, or the rules of any other successor organization or comparable organization of like type and standing, in the event that the American Arbitration Association shall not then be in existence. The award and decision of a majority of the arbitrators shall be binding, final and conclusive on the parties and may include a determination as to who shall bear the expense of the arbitration proceedings, including reasonable attorneys' fees. All arbitration proceedings hereunder shall be conducted in Phoenix, Arizona.

6. Mortgaging or Otherwise Encumbering the Leased Premises: To enable Lessee to obtain financing for making any improvements to the premises, including but not limited to buildings, structures, architectural, engineering, and financing costs and fees, development expenses (not including rent payable hereunder to Lessor), contractors' fees, labor and materials, landscaping, offsite and onsite improvements, and for all subsequent enlargements, alterations, repairs, replacements and modifications thereof (all of which shall hereinafter be referred to as the "Improvements" and all of

which shall be included in computing the cost thereof), to be constructed on or used in or about the premises, Lessor expressly agrees that Lessor's title shall be subordinate and subject to the lien of real mortgages (and any subsequent renewal, modification, replacement or extension thereof) as may be required by any bank, insurance company, other lending institutions, or other entity, as a condition of making a loan or loans. If Lessee so requests, Lessor shall execute a waiver of Lessor's rights, and cause any mortgagee of Lessor to waive its rights, as to any fixtures, furniture, equipment or other personal property of Lessee used on the leased property in favor of any third person or entity or entities financing Lessee's purchase or lease thereof. Provided, however, that (i) where the improvement being constructed are for an existing buyer, the total amount of any such mortgage or mortgages shall not exceed 80% of the sales price for such improvements, (ii) where the improvements being constructed have no existing buyer, the total amount of any such mortgage or mortgages shall not exceed 80% of the total estimated cost of all such improvements; and that (iii) in the case of the initial sale of one (1) or more apartment or dwelling units, the total amount of any such mortgage or mortgages shall not exceed 80% of the full sales price of such apartment or dwelling unit or units. Provided the conditions set forth herein are met by Lessee, this subordination shall be self-operative and no further instrument of subordination shall be required. Lessor shall, nevertheless, execute and deliver, from time to time, such subordination agreements, mortgages, certificates or documents affirming and confirming such subordination as Lessee may reasonably request provided the following conditions are met:

- (a) Execution of any such documents of encumbrance by Lessor shall not constitute a

waiver or otherwise affect Lessor's right to payment of rentals hereunder from Lessee and shall not directly or indirectly impose personal liability upon Lessor for the repayment of any loan or loans.

(b) Except for interim loans, which shall have maturity of not to exceed three (3) years, any such loan or loans shall be amortized with approximately equal periodic installments of principal and interest, payable at least quarterly and all loans shall provide for complete repayment prior to the end of the term of this Lease.

(c) The lender or secured party shall be a bona fide lending institution or other entity such as, but not limited to, an insurance company, real estate, profit-sharing or pension trust, bank or savings and loan association, title insurance company or reputable mortgage company.

(d) Any documents of encumbrance shall encumber only that part of the lease premises which will be improved or developed by construction of Improvements through use of the proceeds of the loan (whether representing interim or permanent financing), together with a reasonable area appurtenant thereto.

(e) Lessee shall pay in full any loan or loans made as contemplated by this paragraph 6 and shall not permit nor commit any other conditions of default to occur or exist with respect to any encumbrance or loan secured thereby; Lessee shall indemnify and save Lessor harmless from any and all liabilities, loss, cost, obligations, expenses, claims, demands, suits, causes of action or damages of any kind or character and by whomsoever claimed, arising from or in any manner connected with or related to any such encumbrance or subordination agreements and Lessee shall pay to Lessor any and all reasonable attorneys' fees incurred by Lessor in connection with the protection of Lessor's right, title and interest in and to the lease premises to the extent that the same may be affected by claims arising out of or related to such encumbrance or subordination agreements.

(f) The maturity of the balance due on the loan or loans may not be accelerated by the owner and holder thereof by reason of the default of the Lessee until sixty (60) days after such owner or holder shall have given written notice of such default to the Lessor, and may not then be accelerated if all conditions of default specified in such notice shall have been cured within such sixty (60) day period, and any performance of any obligation of Lessee with respect to any of said loans shall be accepted by the owner or holder thereof

if tendered by the Lessor. All documents of encumbrance or subordination agreements shall contain a provision that notice shall be given to Lessor by the mortgagee sixty (60) days prior to the commencement of any foreclosure proceedings against Lessee, which notice shall specify the default or failure of Lessee to comply with the terms thereof, and in the event Lessee fails to remedy any default in payment of any obligation properly due from Lessee to the mortgagee or to cure any breach of the terms of the encumbrance document or subordination agreement within thirty (30) days after written notice thereof from Lessor, Lessor may make, if it elects, any such defaulted payment or cure any such breach or purchase the property at any foreclosure sale or redeem it from any such sale, and in so doing Lessee shall repay the Lessor, upon demand, the full amount so paid and expended by Lessor with interest thereon at the rate of eight percent (8%) per annum from the date of such demand, such amount with interest to be secured by Lessor's landlord lien.

(g) Any provision hereof to the contrary notwithstanding, Lessee, or any subtenant, shall have the right to refinance and re-amortize the existing balance of any loan or loans obtained under the provisions of this paragraph independent of or in conjunction with new and additional financing and the subordination provided for in this paragraph shall be applicable to any such refinancing or re-amortization provided all the other conditions set forth in this paragraph are complied with.

(h) In no case shall any lender to whom any portion of the leased premises is mortgaged or encumbered whereunder Lessor has executed the mortgage, deed of trust, or a separate instrument subjecting Lessor's right, title and interest to the lien of such instrument be obliged to inquire whether the terms and conditions of this paragraph of this Lease have been met, and execution of any such instrument by Lessor shall be deemed to constitute Lessor's agreement that all of such terms and conditions have been met, that Lessor has no defenses whatsoever to foreclosure of such mortgage, deed of trust or other encumbering instrument, upon default, and that any such instrument may be foreclosed as to both Lessor's and Lessee's interest according to its terms and provisions.

7. Insurance: Lessee will at all times during the term of this Lease keep all buildings, improvements (excluding site development improvements) and fixtures on the premises insured to the extent of eighty percent (80%) of the insurable value thereof against loss or damage from fire. The proceeds of such policies shall be payable to any mortgagee, or beneficiary of any deed of trust if required by the mortgagee or beneficiary and, if not so required, then to Lessor and Lessee as their interests may appear. Any provisions herein contained to the contrary notwithstanding, unless a lesser amount is agreed to by the lender in no event shall less insurance coverage be carried and provided for than will fully pay and satisfy any and all mortgage liens or other encumbrances as they may from time to time exist and pertain to the leased premises.

Lessee agrees to indemnify and save and hold harmless Lessor from any loss, liability or expense, death or injury of persons in or about the leased premises other than as a result of negligence or default of Lessor, Lessor's agents or employees. The relationship of the parties hereto is that of landlord and tenant, and Lessee is not and shall not be Lessor's agent for any purpose hereunder unless otherwise expressly provided herein.

Lessee shall at all times during the term of this Lease maintain in force an insurance policy or policies which will name Lessor and Lessee and insureds against all liability resulting from injury occurring to persons in or about the premises, the liability under such insurance to be not less than \$500,000.00 for one person injured, \$1,000,000.00 for any one accident, and \$100,000.00 for property damage. The original of such policy or policies shall remain in possession of Lessee; provided, however, that Lessor shall have the right to receive from Lessee, upon written demand, a duplicate policy or policies of any such insurance. Lessee shall also maintain and keep in force all employees' compensation insurance on its employees, if any, required under the applicable Workmen's Compensation Laws of the State of Arizona.

All insurance policies provided for under this paragraph 7 shall be issued by a company or companies responsible and authorized to do business in the State of Arizona, as Lessee shall determine, and shall be approved by Lessor, which approval shall not be unreasonably withheld.

8. Construction Work: All initial construction work shall be done under a written contract with a building contractor licensed under the laws of the State of Arizona. If the construction is undertaken and done by Malouf Construction &

Development Co., an Arizona corporation, or Malouf Bros. Construction Co., an Arizona corporation, as the general contractor, no mechanic, labor, material or completion bonds shall be required, otherwise all construction work shall be covered by bonds issued by a corporate surety authorized to do surety business in the State of Arizona in the full amount of the cost of construction, insuring Lessee and Lessor as their interests may appear against loss by reason of any mechanics', material-men's or labor liens, or liens of a similar nature, and guaranteeing performance of such contracts.

9. Total and Partial Destruction: In the event that all or any building, improvement, fixture or structure on the premises shall be totally or partially destroyed or damaged by fire or other casualty, the Lessee, at the Lessee's discretion, may elect not to rebuild or otherwise repair the premises, and Lessee, in such event, shall be entitled to all insurance proceeds. It is expressly understood, however, that nothing contained herein shall relieve or alter or affect the Lessee's obligation to pay rent hereunder, and destruction of all or substantially all of the buildings, improvements, structures, fixtures, or other appurtenances on the leased premises during the term hereof shall not relieve Lessee of the duty to pay rent.

10. Utility Charges: Lessee shall pay or cause to be paid all charges for water, gas, electricity, telephone service, sewage service, garbage service and other utilities used in or upon the leased premises during the term of this Lease.

11. Taxes and Assessments: Lessee shall pay and discharge all taxes, assessments and water charges assessed against the premises, subject to the following terms and conditions of this paragraph 11:

(a) Lessee shall pay as additional rent, before any fine, penalty, interest or cost that may be added thereto for the nonpayment thereof, all real estate taxes, assessments, water rates and charges, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind which are assessed or imposed upon the leased property, or any part thereof, or become payable during the term of this Lease. Provided, however, that all taxes assessed prior to the effective date of this Lease and payable in whole or in installments after the effective date of this Lease, and all taxes assessed during the term hereof payable in whole or in installments after the term of this Lease has run, shall be adjusted and prorated so that the Lessor shall pay its prorated share for the period prior to and for the period subsequent to the leased term and the Lessee shall pay its prorated share for the leased term.

(b) Lessee shall pay to Lessor at the same time as any other rental payment is made to or for Lessor, an amount equal to the amount of all gross proceeds taxes, privilege taxes, sales taxes, or like taxes now or hereafter levied or assessed by the United States, the State of Arizona, or any municipal corporation or political subdivision, upon such rental, or the payment or receipt thereof, or which Lessor will be caused to pay as a result of the receipt thereof, except that Lessee shall not be obligated to pay to Lessor any amount on account of any franchise, corporate, estate, inherit-

ance, succession, capital levy or transfer tax of the Lessor, or any income, profits or revenue tax.

(c) Upon request, Lessee shall furnish to the Lessor for its inspection, within thirty (30) days after the date any amount is payable by the Lessee as provided in this paragraph 11, official receipts of the appropriate taxing authority or other proof satisfactory to the Lessor evidencing payment. Lessee shall have the right to contest payment or assessment of any tax or penalty as described herein.

12. Lessor's Access to Premises: Lessor, or its agent or nominee, at all reasonable times, shall have free access to the premises for the purpose of examining or inspecting the condition thereof, to exhibit the premises to prospective purchasers, and to determine if Lessee is performing the covenants and agreements of this Lease and to post such reasonable notices as Lessor may desire to protect the rights of Lessor.

13. Assignment and Sublease: The Lessee shall have the right to assign all or part of this Lease Agreement or sublease the whole or any part of the leased premises. No subletting or assignment by the Lessee shall affect the obligation of the Lessee to perform all of the covenants required to be performed by the Lessee under the terms of this Lease. Any sublease of all or a part of the premises or assignment of all or a portion of this Agreement shall be binding upon the Lessor and shall continue in full force and effect even though subsequently the Lessee herein shall default hereunder and Lessor shall terminate this Lease by reason of such default, provided that upon such termination the rights of Lessee in and to any such assignment or sublease shall vest in the Lessor. Subject to the rights

granted any assignees or sublessees under the provisions of this Lease, the Lessor and the Lessee each shall have the right to assign or transfer its respective right, title and interest in and to this Lease without the consent of the other party. No such assignment shall operate to relieve the assigning party of any obligation or liability arising under the terms of this Lease unless the party hereto shall specifically agree in writing that such proposed assignment shall so release the assigning party.

Any assignment or sublease by Lessee shall be in writing, duly acknowledged and recorded either in full or by way of the recording of a memorandum thereof and Lessee shall mail a written notice of any such assignment, together with a copy thereof, to Lessor at least ten (10) days before the commencement of the term of any such assignment, it being understood and agreed that written notice of any sublease need not be given.

14. Indemnification: Lessee covenants that Lessor is to be free from liability and claims for damages by reason of any injury to any person or persons, including Lessee, or property of any kind whatsoever and to whomsoever belonging, including Lessee, from any cause or causes whatsoever for which Lessor is not responsible, while in, upon, or in any way connected with the premises during the term of this Lease. Lessee shall indemnify and save harmless Lessor from all liability, loss, costs, and obligations on account of or arising out of any such injuries or losses however occurring. Lessee shall have the right to contest the validity of any and all such claims, to defend, settle, and compromise any and all such claims of any cause or character and by whomsoever claimed, in the name of Lessor as Lessee may deem necessary, provided that the expenses thereof shall be paid by Lessee.

15. Easements and Dedications for Utilities and Streets:

Lessor shall at the request of Lessee, and Lessor hereby grants to Lessee the right and authority to grant such rights and easements as may be necessary in connection with the premises to enable the premises to be adequately served by gas, electricity, water, sewer, and telephone and other utilities, and dedicate to public use such portions of the premises that may be required by any governmental authority for streets, alleys, parkways, or other uses, reasonably consistent with the use of said premises.

16. Force Majeure and Prevention of Construction: In

the event that any obligation of any party to this Lease shall be impossible of performance by reason of an act of God or the elements, shortage or unavailability of necessary materials, supplies, or labor, shortages, or interruptions of transport facilities, or because of applicable governmental regulations or restrictions, including zoning ordinances applicable to the premises, or other causes beyond the affected party's control, then and in such an event the time for performance of the obligation of the party so affected shall be extended until a time period equal to the delay so caused by such cause beyond such party's control.

17. Title Policy: Within thirty (30) days after receipt of written request from Lessee, Lessor shall, at Lessor's expense, furnish Lessee with an ALTA policy of title insurance from Transamerica Title Company insuring Lessee in an amount of not less than \$10,000 showing the property to be free and clear of all liens and encumbrances except easements for rights-of-way and taxes for the current year.

18. Removal of Personal Property and Lessee's Fixtures and Trade Fixtures: Subject to the rights granted any assignee

or sublessee under the provisions of this Lease, upon any termination of this Lease, ownership and possession of all buildings and other permanent structures, if any, located upon the premises as of such date shall pass to Lessor; provided, however, that Lessee may, if not in default under any of the terms of this Lease, within a reasonable time after such termination, remove any and all personal property, including but not limited to, furniture, equipment, and fixtures belonging to Lessee; provided, further, that Lessee shall repair the damage or compensate Lessor therefor, if any, caused to any structures or buildings on the premises by such removal.

Subject to the rights granted any assignee or sublessee under the provisions of this Lease, upon the expiration of the term of this Lease, and at any time, and from time to time, prior to such expiration or termination, Lessee and its subtenants, assignees, and agents and employees of Lessee, if not then in default as to any of the terms of this Lease, shall have the right to remove from the premises any and all of their personal property, including but not limited to, furniture, equipment, and fixtures, and any and all assignees and sublessees. Any damage caused to the premises by the removal of such property shall be repaired by Lessee or Lessee shall compensate Lessor therefore.

19. Default: Upon the nonpayment of the whole or any portion of the rentals hereby reserved, or any other sum or sums of money due to Lessor under the provisions hereof within thirty (30) days after notice thereof in writing from Lessor, or upon the nonperformance by Lessee of any other covenant or condition herein set forth on the part of said Lessee to be kept and performed within sixty (60) days after notice thereof

in writing from Lessor, Lessee shall be in full default hereunder, and, upon such default, it shall be lawful for the Lessor, at its option, to declare a termination of this Lease and to re-enter upon said leased premises and to again repossess and enjoy the same and all the Improvements thereon, subject to the rights of any sublessees or assignees, as set forth elsewhere in this agreement, and, in addition thereto, upon such default the Lessor shall be entitled to avail itself of whatever remedies it may have at law for the collection of any unpaid rentals hereunder or for any damages that it may have sustained by reason of the breach by Lessee of the terms and conditions hereof.

Lessee shall not be in default hereunder and no termination shall be declared hereunder for any cause whatsoever, unless and until Lessor shall have first given to Lessee said sixty (60) days written notice of the nonperformance for which it is asserted that such termination may be declared, and such default shall not occur and such termination shall not be effective unless Lessee, after such notice, shall fail during said time limit in said notice to fulfill and perform the obligation as to which such default exists, or in the event such obligation cannot be fulfilled and performed within said time limit, unless Lessee, after such notice, shall fail during said time limit to commence and thereafter continue in good faith fulfillment and performance of such obligation. For any failure on the part of Lessor to fulfill or perform any of the agreements or provisions hereof obligatory upon Lessor, Lessee shall have the same right of termination and other rights, upon the same conditions, as are hereinabove accorded the Lessor for a default on the part of Lessee.

Waiver by either party of any default on the part of the other party shall not be deemed in any manner to be a waiver of any subsequent default, nor shall any delay upon the part of either party in enforcing any of the provisions hereof preclude such party at any subsequent time from promptly enforcing the provisions hereof.

No termination of this Lease by forfeiture nor taking or recovering possession of the leased premises shall deprive Lessor of any other action, right, or remedy against Lessee.

20. Waiver of Breach: No waiver by Lessor or Lessee of the breach of any provision of this Lease shall be construed as a waiver of any preceding or succeeding breach of the same or any other provisions of this Lease, nor shall the acceptance of rent by Lessor during any period of time in which Lessee is in default in any respect other than payment of rent be deemed to be a waiver of such default.

21. Notices: Whenever it shall be necessary for either party to serve notice on the other respecting this Lease, such notice shall be valid and sufficiently served, given or made if mailed by certified or registered mail except those which require formal legal service of process. If the notice is intended for the Lessor, the notice shall be addressed to Lessor in care of:

Elmer C. Coker
Attorney at Law
Luhrs-Central Building, Suite J
132 South Central Avenue
Phoenix, Arizona 85004

and if the notice is intended for the Lessee, the notice shall be addressed to Lessee in care of:

Mr. Robert Malouf
4841 N. Scottsdale Road, Suite 202
Scottsdale, Arizona 85251

with a copy to:

Mr. Don Corbitt
Snell & Wilmer
3100 Valley Center
Phoenix, Arizona 85073

The notice shall be deemed to have been served within ten (10) days after the same has been deposited in the United States Post Office, and the time stated in any notice shall be computed from the time the notice is mailed to the party to whom it is addressed. Notwithstanding anything in this paragraph to the contrary, personal service may be accepted by either party or personal service may be served on either party as by formal legal service of process, and the time stated in any such notice shall be computed from the time of such acceptance of service.

Either party may furnish to the other in writing a different mailing address and designate another individual upon whom all notices may be served as herein provided.

22. Arbitration: Except as stated in paragraph 4 above, any dispute or controversy arising between the parties involving the interpretation or application of any provision of this Lease or arising out of this Lease, shall be submitted to and determined by arbitration in accordance with the rules then obtaining of the American Arbitration Association, or the rules of any other comparable organization in the event that the American Arbitration Association shall not then be in existence. The award and decision of a majority of the arbitrators shall be binding, final and conclusive on the parties and may include a determination as to who shall bear the expense

of the arbitration proceedings, including reasonable attorneys' fees. All arbitration proceedings hereunder shall be conducted in Phoenix, Arizona.

23. Attorneys' Fees: In the event any suit or arbitration is instituted by either party against the other in any way connected with this Lease, or for the recovery of possession of the premises, the successful or non-defaulting party to any such action or arbitration shall recover from the unsuccessful or defaulting party a reasonable sum for its attorneys' fees in connection with such suit or arbitration, such attorneys' fees to be fixed by the court or arbitrators as the case may be. In the event that any person who shall not be a party to this Lease shall institute an action against Lessee in which Lessor shall be involuntarily and without cause joined as a party, Lessee shall reimburse Lessor for all attorneys' fees incurred by Lessor in connection therewith. Likewise, in the event that any person who shall not be a party to this Lease shall institute an action against Lessor in which Lessee shall be involuntarily and without cause joined as a party, Lessor shall reimburse Lessee for all attorneys' fees incurred by Lessee in connection therewith.

24. Prohibited Assignments: In the event that a general assignment is made by Lessee for the benefit of its creditors, or in the event that Lessee is finally adjudicated a bankrupt either voluntarily or involuntarily by final order of a bankruptcy court or competent jurisdiction or is finally adjudicated an insolvent by a final order of a court of competent jurisdiction, at the option of Lessor and after fifteen (15) days written notice from Lessor to Lessee, this Lease shall terminate and Lessor shall have the immediate right to re-enter and take

possession of all premises and all of the buildings, structures and fixtures located thereon, subject to the rights granted any assignees or sublessees under the provisions of this Lease.

Furthermore, if a writ of general execution is levied on the leasehold estate created hereunder and is not discharged within a reasonable time before sale under execution, the leasehold estate created hereby, subject to the rights granted assignees or sublessees under this Lease, shall cease and terminate at the option of Lessor, and shall in no wise be treated as an asset of Lessee if Lessor exercises said option by giving written notice thereof to Lessee, in which event Lessor shall have the immediate right to re-enter and take possession of all premises and all of the buildings, structures and fixtures located thereon.

25. Quiet Enjoyment: Conditioned upon Lessee paying the rent herein provided and performing and fulfilling all the covenants, agreements, conditions, and provisions herein to be kept, observed or performed by Lessee, Lessee and any assignees or sublessees shall and may at all times during the term hereby granted, peaceably, quietly and exclusively, have, hold, and enjoy the demised premises.

26. Entire Agreement: This Lease set forth all the promises, inducements, agreements, conditions, and understandings between Lessor and Lessee relative to the leased premises, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to

this Lease shall be binding upon Lessor or Lessee unless reduced in writing and signed by them. Parol evidence shall never be admissible in any court, tribunal or governmental agency to modify, amend or vary the terms of this Lease.

27. Recordation of Lease: In the event it should be so required by any title company insuring title for Lessor or Lessee or by any lending institution from which Lessee proposes to make a loan, then Lessee may cause this lease to be placed of record.

28. Titles: The titles which are used following the number of each paragraph are so used only for convenience in locating various provisions of this Lease and shall not be deemed to affect the interpretation or construction of such provisions.

29. Successors: This lease and all provisions hereof shall be deemed a covenant running with the land or equitable servitude, shall be binding upon and inure to the benefit of the heirs, devisees, legatees, executors, administrators, trustees, successors, guardians, and assigns of Lessor, and the successors and assigns of Lessee.

30. Governing Law: It is agreed by and between the parties to this Lease that the terms, conditions, covenants, and agreements herein contained, and in their entirety, shall be governed, construed, and controlled according to the laws

of the State of Arizona.

31. Condemnation: If the whole of the leased premises, or such portion thereof as will materially affect the overall use of the leased premises, is condemned for any public use or purpose by any legally constituted authority, then in either of such events, this Lease shall cease at the option of Lessee from the time when possession is taken by such public authority and rental shall terminate between the Lessor and the Lessee as of the date of the surrender of possession. In the event, however, that Lessee shall elect to remain upon the leased premises, then Lessor and Lessee agree to negotiate for a new rental for such portion of the leased premises that has not been taken under condemnation or eminent domain proceedings as defined in this paragraph 31. It is further understood that in the event Lessor or Lessee are unable to agree upon a new rental, then they shall submit the matter to arbitration as provided for in paragraph 22 of this Lease.

Should Lessee elect to terminate this Lease, then such termination shall be without prejudice to the rights of either Lessor or Lessee to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the Lessor nor the Lessee shall have any rights in or to any award made to the other by the condemning authority.

32. Corporate Tenant. Exoneration of Stockholders and Officers: In any case where a corporation is or shall be the Lessee hereunder, no recourse under or upon any obligation, covenant or agreement of this Lease otherwise permitted by any statute or rule of law shall be had against any incorporator,

subscriber, stockholder, officer, or director, past, present or future, of such corporation, either directly or through the corporation.

33. Remedies Cumulative:

(a) No remedy herein conferred upon Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity. No delay or omission by Lessor to exercise any right or power arising from any default shall impair any right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein.

(b) The filing of a suit for specific performance or forfeiture, or both, shall not constitute an election of the rights and remedies of the parties notwithstanding any other provision in any other document to the contrary and notwithstanding the rule of law pronounced by the Supreme Court in Wilhorn Builders vs. Cortaro Management Co., 81 Ariz. 381, 307 P.2d 94. In any such proceeding the party in whose favor judgment is rendered shall recover from the other party all costs necessarily incurred and reasonable attorneys' fees to be fixed by the court. No termination of this Lease by forfeiture, nor taking or recovering possession of the lease premises, shall deprive Lessor of any other action, right or remedy against the Lessee.

(c) In the event any monies become due and payable from one party to the other and payment is not promptly

made when due, any unpaid sums shall bear interest at the rate of eight percent (8%) per annum from the due date until paid.

(d) In the event any party hereto brings any suit or action for the enforcement of any rights or privileges hereunder or any promises or covenants of any party hereunder, such rights or remedies shall include the right to mandatory injunction, restraining order or other equitable relief, but such remedies shall be in addition to any other rights or remedies which any party may have and shall not be exclusive.

(e) No proceeding under the bankruptcy laws of the United States or rejection by any court of this Lease, or any terms, provisions or covenants hereof, shall affect Lessee's or any sublessee's tenancy under this Lease, nor any of Lessee's, any sublessee's, any assignee's, or any mortgagee's rights which they or any of them are entitled to hereunder or under any sublease, assignment, mortgage, deed of trust or other security agreement.

34. Subdivision and Dedications: Lessee may cause the leased premises or any part thereof at any time and from time to time to be subdivided and improved, provided any subdivision plat or plats thereof shall comply with all existing governmental rules and regulations. Lessee shall be authorized to execute and record the above mentioned plat or plats and Lessee is further authorized by Lessor to file for record such restrictions as Lessee may submit. All expenses in connection with subdividing and improving the leased premises including,

but not limited to, installing streets, water lines, sewers, or any public utilities, shall be the obligation of Lessee.

Lessee shall be further authorized by Lessor to dedicate to public use roads, alleys or easements, and to convey any portions so dedicated to the county in which said property is located or to a city, if said property is located within the boundaries of a city.

Lessee is further authorized to execute petitions seeking annexation to a city or a town or change in zoning for all or a portion of the leased premises. Lessee is also authorized to execute all petitions, documents and instruments necessary or incident to the creation of fire, sewer, water, electric, sanitary, road, utility or other improvement districts of which the leased premises are a part.

35. Time of the Essence: Time is of the essence of this Lease and in the performance of all of the covenants and conditions hereof.

36. Additional Documents: As to the rights of Lessee as set forth in paragraphs 6, 15, 35 and 37, the discretion with respect to same shall rest solely in Lessee, and Lessor, his executors, trustees, and all legal successors shall, upon request of Lessee, execute any and all documents which may be reasonably necessary to effectuate same, within a reasonable time after the request therefor, but in no event later than ten (10) days after said request. Further, as to any other rights of Lessee contained elsewhere in this Lease, Lessor shall execute whatever other documents may be reasonably necessary to effectuate the other terms and provisions hereof.

37. Additional Provisions Regarding Development of
the Leased Premises by Subdividing:

I. RECITALS

(a) For purposes of convenience only this Lease may sometimes hereinafter be referred to as the "Basic Lease." Lessee contemplates that it may develop part or all of the leased premises by subdividing the same into single family residential lots. As to such developments, the provisions set forth in this paragraph 37 shall prevail over any inconsistent provision elsewhere contained in this Basic Lease. Provisions may be made for the subleasing of individual lots and for the sale of the improvements placed thereon, and for mortgaging of the respective leasehold interests of subleases on a basis whereunder Lessor will agree as to each sublease that so long as such sublease is not subject to termination for default by the sublessee, termination of this Basic Lease will not terminate or otherwise affect such sublease; that the tenancy under such sublease shall be undisturbed, and for attornment between such sublessee and Lessor; and, in addition, that any mortgagee of such sublessee's leasehold estate shall be entitled to notice of any default under such sublease and the right to cure any such default.

(b) Prior to the sale of improvements constituting the single family residences and the subleasing of the subdivided lots, Lessee will sublease in the entirety under a written sublease (the "Prime Sublease") such portions of the leased premises as have been subdivided to a corporation, which corporation is to be a membership corporation, not for profit,

(hereinafter referred to as "Membership Corporation"), the members of which are the sublessees, and such corporation in turn will be the lessor under the subleases described in (a) above. In addition to the agreements of Lessor to be made in connection with each sublease, Lessor will agree that no default under or termination of this Basic Lease shall terminate or otherwise affect the Prime Sublease to the Membership Corporation, so long as the Prime Sublease is not subject to termination for default by the Membership Corporation, and Lessor shall agree that the Prime Sublease shall continue in force and effect so long as it is not subject to termination for default by the Membership Corporation thereunder. In addition, Lessor will agree to give notice of any defaults under either this Basic Lease or the Prime Sublease, to the Membership Corporation, and to any mortgagee of the leasehold estate of the Membership Corporation, and to permit the Membership Corporation, or any mortgagee of the leasehold estate of the Membership Corporation, to cure any defaults under either the Basic Lease or the Prime Sublease. It is further contemplated that if the entire project is completed, Lessee's interest in the Basic Lease will be assigned to the Membership Corporation, and that upon such occurrence the aforesaid Prime Sublease to the Membership Corporation will be merged into this Basic Lease, and that the terms and provisions of the Prime Sublease will be of no further force or effect and that thereupon Lessee will be relieved of any further liability under this Basic Lease.

II. COVENANTS

A. Residential Subdivision; Consent to

Prime Sublease:

(1) Lessee may subdivide all or portions of the leased premises, and Lessor agrees to join with Lessee in execution of all declarations of covenants, restrictions and conditions, plats and grants of easement, for the purpose of subjecting Lessor's fee interest thereto, in such form as Lessee shall request of Lessor; provided, however, that all subdivisions subsequent to the initial subdivision shall be of property within the leased premises which is contiguous to portions of the leased premises previously subdivided. Lessor acknowledges that Lessee intends to commence with an initial subdivision which will include an as yet undetermined number of lots and a portion of the contemplated common facilities, and that such initial subdivision may be enlarged by amendment and annexation of additional property thereto. Lessor further acknowledges that it may be further necessary to amend the terms and provisions of the declaration of covenants, restrictions and conditions, plats, and grants of easement, as conditions may, in Lessee's discretion, require, and Lessor agrees to join with Lessee in the execution thereof upon request of Lessee, as Lessee may from time to time request of Lessor.

(2) Lessee may, in Lessee's discretion,

grant easements for streets and roadways and for utilities and other services in connection with the project on the leased premises, and Lessor agrees, upon request of Lessee, to join with Lessee in execution of grants of easements for the purpose of subjecting Lessor's fee interest thereto. Lessor acknowledges that the foregoing grants of easement may be accomplished in part by blanket easements in the said declarations or by separate grants of easement as may be required by the City of Scottsdale or any utility company serving the leased premises.

(3) Lessor agrees that Lessee may sub-lease to the Membership Corporation in the entirety the portions of the leased premises which may hereafter be subdivided (the Prime Sublease) upon such terms and conditions as shall be determined by Lessee and the Membership Corporation; subject, however, to the limitations contained in subparagraph B(3) hereof. The Prime Sublease may provide for an equitable apportionment and proration of the monthly rental payable under Paragraph 4 of this Basic Lease between Lessee as to the portions of the leased premises not subdivided, and the Membership Corporation and the sublessees therefrom as to portions of the leased premises subdivided.

(4) Lessor shall have the right to approve of the form of the Prime Sublease, which approval shall not unreasonably be withheld, and agrees that in the case of any conflict between any of the terms and provisions of this Basic Lease and the Prime Sublease, the terms and provisions of the

Prime Sublease and the rights of the Membership Corporation as lessee thereunder, shall prevail and be controlling and that the Membership Corporation thereunder shall only be required to perform the terms and provisions of the Prime Sublease and the obligations imposed upon the Membership Corporation thereunder. Lessor further agrees that so long as the Prime Sublease to the Membership Corporation is not subject to termination for default by the Membership Corporation thereunder, that Lessor will not join the Membership Corporation as a party defendant in any action or proceeding, nor take any other action, for the purpose of terminating the Membership Corporation's interest and estate under the Prime Sublease because of any default under or termination of this Basic Lease. Lessor further agrees that default under or termination of this Basic Lease shall not terminate or otherwise affect the Prime Sublease; that the Prime Sublease will continue in force and effect; and that the Membership Corporation thereunder shall have and enjoy during the term of the Prime Sublease the quiet and undisturbed possession of the premises hereafter subleased under the Prime Sublease, together with all easements and appurtenances thereto, so long as the Prime Lease to the Membership Corporation is not subject to termination for default of the Membership Corporation. It is further agreed that in the event Lessor should succeed to the interest of Lessee as lessor under the Prime Sublease, Lessor shall thereafter stand in the place and stead of

Lessee as lessor under the Prime Sublease, and in such case all the rentals accruing and payable thereunder pursuant to this Basic Lease to the extent that the same have been assumed by the Membership Corporation, or the sublessees therefrom, shall be paid to the party or parties succeeding to such interest of Lessee, and any and all of the benefits accruing thereafter to the lessor under the Prime Sublease and the subleases therefrom shall belong to such party or parties, and that the Membership Corporation, and the sublessees therefrom, shall be bound to and attorn to such party or parties to the same force and effect as if Lessor were the original lessor under the Prime Sublease.

(5) In the event of default by a sublessee under a sublease and such sublease being terminated or the Membership Corporation having otherwise come into possession of the improvements constituting the single family residence and the subdivided lot appurtenant thereto, the Membership Corporation may terminate, at its election, any obligation of the Membership Corporation (or Lessee) under the Prime Sublease or this Basic Lease to pay the ground rents attributable thereto to Lessor or to pay taxes and assessments attributable thereto (but only to the extent the same are to thereafter accrue) by conveying, transferring and assigning to Lessor the right, title, and interest of the Membership Corporation in such improvements and

interest in said lot. In such event, the total obligation to pay ground rents and taxes under this Basic Lease shall be reduced by the amount of ground rents and taxes and assessments attributable to such improvements and interest in said lot accruing after the date of conveyance, transfer, and assignment. In such event, such improvements and interest in said lot shall be and remain charged with and subject to the obligations of the sublessee under the sublease, to thereafter accrue, as to payment of monthly maintenance charges or other assessments and utility charges, and as to the respective rights and obligations of a sublessee and the Membership Corporation as to any building maintenance and repair, insurance, fire or casualty, the right to use of all common facilities and services, and the terms and conditions to the sublease with respect to the foregoing matters shall be deemed a covenant running with the land or an equitable servitude for such period as the Membership Corporation remains in existence and there are any subleases in existence. In addition, the membership in the Membership Corporation appurtenant to such improvements and interest shall be and remain in existence, except that there shall be no requirement that the membership appurtenant thereto be subject to approval by the Board of Directors of the Membership Corporation.

(6) Any provision of the foregoing notwithstanding, in the event of any disputes or

adverse claims or demands to any of the rental payments payable by the Membership Corporation, or any sublessee therefrom, such sublessees shall have the right to interplead the same in a court of competent jurisdiction by an interpleader action, and the bringing of any such interpleader action, and the deposit of any such moneys with the court shall constitute payment of such rentals.

(7) In addition to and separate and independent of the agreements of Lessor and Lessee made in subparagraphs (1) through (6) hereof, Lessor agrees that in the event Lessor claims the existence of any default by Lessee under this Basic Lease that Lessor shall give written notice of such default to the Membership Corporation, and also to any mortgagee of the leasehold interest of the Membership Corporation, who shall have given to Lessor written notice specifying the name and address of such holder, and that before Lessor exercises any right or remedy which it may have under this Basic Lease by virtue of such default, Lessor will accept the cure thereof by the Membership Corporation, or any mortgagee of the Membership Corporation's leasehold interest; provided, however, such cure is made within the period provided for cure in the Basic Lease, or within sixty (60) days after the giving of written notice to the Membership Corporation and any such mortgagee of such default, whichever is greater, or if such default is other than for nonpayment of money and

cannot reasonably be cured within the greater of the periods above provided, then within such reasonable additional time as may be reasonably required. Any provision of the foregoing notwithstanding, any breach or default other than in payment of moneys (including but not limited to payment of rental, taxes, or assessments) not susceptible of being cured by the Membership Corporation or any such mortgagee (such as but not limited to insolvency or bankruptcy of any party obligated to give such performance), shall be deemed to have been waived if any and all other defaults have been cured.

(8) The foregoing provisions of subparagraphs (1) through (7) hereof shall be effective and self operating without execution of any additional instruments by the parties hereto; provided, however, Lessor and Lessee agree to execute separate instruments of consent and right to cure for the benefit of the Membership Corporation or any mortgagee of the Membership Corporation's interest, conforming substantially to the foregoing provisions, at the request of the Membership Corporation or any such mortgagee.

B. Consent to Subleases Under Prime Sublease and Mortgaging Thereof:

(1) Lessor agrees that the Membership Corporation may sublease the subdivided lots and any improvements placed thereon and that the respective sublessees shall have the right to mortgage their respective leasehold interests and the improvements placed thereon.

(2) A copy of the initial form of sublease to be entered into between the Membership Corporation as sublessor and each purchaser of improvements constituting a single family residence as sublessee, shall be delivered to Lessor and Lessor shall have the right to approve the same, which approval shall not be unreasonably withheld.

(3) Lessor and Lessee agree that in case of any conflict between any provisions of this Basic Lease or the Prime Sublease, and the terms and provisions of any sublease, that the provisions of such sublease and the rights of the sublessee thereunder shall prevail and be controlling, and that the sublessee thereunder shall only be required to perform the obligations imposed upon the sublessee by such sublease. Lessor and Lessee and each of them agree that so long as a sublease is not subject to termination for default of the sublessee under the sublease, neither Lessor nor Lessee or either of them will join the sublessee as a party defendant in any action or proceeding, nor take any other action, for the purpose of terminating the sublessee's interest and estate under the sublease because of any default under or termination of either this Basic Lease or the Prime Sublease or both. Default under or termination of either this Basic Lease or the Prime Sublease or both shall not terminate any sublease, and any such sublease shall continue in force and effect in accordance with all the terms and

provisions thereof, together with all easements and appurtenances thereto, provided the sublease is not subject to termination for default of the sublessee thereunder. Lessor and Lessee agree that so long as a sublessee shall perform such sublessee's obligations under the sublease to be performed by such sublessee, such sublessee shall have and enjoy during the term of the sublease the quiet and undisturbed possession of the premises leased to the sublessee under the sublease, that the sublease shall continue in force and effect, together with all easements and appurtenances, and that the sublessee's possession and rights under the sublease, together with all easements and appurtenances thereto shall not be adversely affected or terminated in any way by reason of any default under or termination of this Basic Lease or the Prime Sublease or both.

(4) In the event either Lessor and Lessee or either of them succeeds to the interest of the Membership Corporation as Lessor under a sublease, then and in such event such party or parties succeeding to such interest shall thereafter stand in the place and stead of the Membership Corporation under the sublease, and in such case all rentals accruing and payable under the sublease shall be paid by the Sublessee thereunder to the party or parties succeeding to such interest, and any and all the benefits accruing thereafter to the sub-

lessor under the sublease shall belong to such party or parties, and the sublessee thereunder shall be bound to and attorn to such party or parties with the same force or effect as if they were the original sublessor.

(5) In addition to and separate and independent of the agreements of Lessor and Lessee made in subparagraphs (1) through (4) hereof, Lessor and Lessee and each of them hereby agree that in the event either of them claims the existence of a default by a sublessee under any sublease, that the party claiming such default shall give written notice of any such default to the sublessee and also to the holder of any leasehold mortgage of the leasehold estate of the sublessee under the sublease who shall have given to Lessor and Lessee written notice specifying the name and address of such holder, and before Lessor or Lessee exercises any rights or remedies which either of them may have by virtue of such default that they or either of them agrees to accept the cure thereof by the sublessee or such mortgage holder, provided that such cure is made within the period provided for cure under the sublease or within the period of sixty (60) days after the giving to such sublessee and mortgage holder of notice of default, whichever is greater, and provided further, that if the default is other than for nonpayment of money and cannot be reasonably

cured within such period of time, then such cure may be made within such reasonable additional time as may be required. Any provision of the foregoing notwithstanding, any default other than in payment of moneys (including but not limited to payment of rental, taxes, or assessments) not susceptible of being cured by the sublessee or such mortgage holder (such as but not limited to insolvency or bankruptcy of the party obligated to give such performance) shall be deemed to have been waived, if any and all other defaults have been cured.

(6) Any provision of the foregoing notwithstanding, in the event of any disputes or adverse claims or demands with respect to any rental payment payable by a sublessee under the sublease, the sublessee or mortgagee shall have the right to interplead the same in a court of competent jurisdiction by an interpleader action, depositing such moneys when due and payable with the court and bringing of any such interpleader action and the deposit of such moneys shall constitute payment of rentals due under the sublease.

(7) The foregoing provisions of subparagraphs (1) through (6) hereof shall be effective and self operating without execution of any additional instruments by the parties hereto; provided, however, Lessor and Lessee agree to execute separate instruments of consent and right to cure for the

benefit of any sublessee or any mortgagee of any sublessee's interest, conforming substantially to the foregoing provisions at the request of any sublessee, or any mortgagee of any sublessee's interest.

(8) Lessor and Lessee agree that the Prime Sublease or any sublease may be amended without the consent of Lessor or Lessee without affecting the terms and provisions hereof or the respective obligations of the parties hereunder, provided such amendments do not relate to or cause reduction of rental or increase in the term.

C. Title to Improvements; Condemnation:

(1) Lessor and Lessee agree that title to any and all improvements made to or upon the leased premises pursuant to the provisions of this paragraph 37 by Lessee or any person claiming by, through, or under Lessee, including but not limited to buildings, structures, streets, curbs, paving and utilities, shall be and remain in persons other than Lessor (i) as to the entire leased premises so long as this Basic Lease is in force and effect, and (ii) as to portions of the leased premises which have been subdivided so long as the Prime Sublease is in force and effect, and (iii) as to the right, title, and interest of any sublessee under a sublease, so long as such sublease is in force and effect.

(2) In the event any part of the leased premises shall be taken by eminent domain, any moneys received as compensation for such condemnation shall be divided between Lessor and Lessee according to the loss sustained by each; provided, however, Lessee shall have the right to recover, and Lessor hereby assigns to Lessee the full amount of damages awarded for any and all improvements made to or upon the lease premises, including but not limited to buildings, structures, streets, curbs, paving, and utilities. It is the intent and purpose hereof that in the event of any taking or condemnation that any sublessee under a sublease shall be protected as to the fair value of the improvements on the property owned by such sublessee, and that any mortgagee of such sublessee's leasehold estate shall be protected as to its interest therein, provided such does not exceed the value of the sublessee's interest in such improvements. It is further mutually understood and agreed that in the event any portion of the lease premises is taken by eminent domain (other than for street, road, or highway purposes on the perimeter of the leased premises or for easements for utilities, wherein the buildings and structures on the leased premises are not affected) that the rental to be paid by Lessee thereunder shall be reduced in proportion to the amount of the buildings and structures so condemned and taken, such proportions to be

determined on the basis of the square feet of building area of the leased premises.

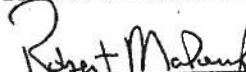
D. Miscellaneous: If Lessee shall complete its contemplated subdivision and assign Lessee's entire right, title, and interest under this Basic Lease to the Membership Corporation, the foregoing provisions hereof with respect to novation shall be effective. Lessee acknowledges that as the project progresses, it is necessary for Lessee and for the Membership Corporation to estimate the pro rata share of the ground rental payable by the sublessees and that a maximum amount therefor is established in each sublease (subject to adjustment at the times provided in paragraph 4 hereof), and that should the total rentals payable for all subleases be Thirty-eight Thousand Two Hundred Forty Dollars (\$38,240.00*) or more per year, that Lessor agrees to accept such amount in full satisfaction of all rental obligations payable under this Basic Lease for the period from the date that the last sublease is entered into up to and including January 1, 2009, and that such amount shall be the minimum rental payable in the event of adjustments under paragraph 4 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.


W. J. SMALL


HAZEL M. SMALL
"Lessor"

THE BRIARWOOD CORPORATION

By 
Robert Malouf, President
"Lessee"

ATTEST:


Richard Malouf, Secretary

STATE OF ARIZONA)
COUNTY OF MARICOPA) SS

On this, the 15th day of December, 1976, before me, the undersigned Notary Public, personally appeared W. J. SMALL and HAZEL M. SMALL, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

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

Robert L. Backwoer

My commission expires:

May 16, 1978

STATE OF ARIZONA)
COUNTY OF MARICOPA) SS

On this, the 13th day of December, 1976, before me, the undersigned Notary Public, personally appeared Robert Malouf and Richard Malouf, who acknowledged themselves to be the President and Secretary, respectively, of THE BRIARWOOD CORPORATION, an Arizona corporation, and that they as such officers and being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers.

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

Dorothy E. Cappella

My commission expires:

October 2, 1977