

COUNTY OF EL PASO STATE OF COLORADO
RECEIVED AT 2:30 O'CLOCK P. M. 8/19/78
RECEPTION NO. 546684 ARDIS W. SCHMITZ COUNTY CLERK

BOOK 3165 PAGE 475

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 4th day of August, 1978, by and between HILL DEVELOPMENT CORPORATION, a Delaware corporation qualified to do business in Colorado ("Landlord"), and HILLCREST CORPORATION, a Colorado corporation ("Tenant").

WHEREAS, Landlord is the owner of that certain real property situated in El Paso County, Colorado fully described in Exhibit "A" attached hereto and made a part hereof (the "Leased Premises"), and which real property is now subject to Lease Agreement recorded in Books 2016 and 2252, at Pages 1 and 587, respectively, of the Public Records of El Paso County, Colorado; and

WHEREAS, Tenant desires to purchase and acquire from E. F. DELGER and FRANK PARONE, all of the buildings, improvements and fixtures presently situated on the Leased Premises constituting a multi-unit apartment project consisting of forty-nine (49) apartments units (the "Units"); and

WHEREAS, following such purchase and acquisition (which Tenant anticipates will occur on or about September 15, 1978), Tenant desires to lease the Leased Premises from Landlord upon the following terms and conditions, convert the Units to condominiums and sell the Units as condominiums in accordance with the laws of the State of Colorado, and further, to cancel the aforementioned existing Lease Agreement.

1. LEASED PREMISES.

a) Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises described in Exhibit "A" hereto, together with all and singular the rights, privileges and easements appurtenant thereto or which are hereinafter provided in this Lease (all of which shall constitute and comprise the Leased Premises). This Lease is made and accepted by Tenant expressly subject to all easements, restrictions, restrictive covenants and zoning ordinances covering or affecting the Leased Premises or any portion thereof.

b) Until such time as the right of way for ingress and egress over Kissing Camels Drive between Mesa Road and the Leased Premises has been fully dedicated to the public land during the period of this lease, Landlord, joined herein by Kissing Camels Property Owners Association, does grant, demise and lease to Tenant, during the term of this Lease, a nonexclusive right of way for ingress and egress only over and across that portion of the roadway known as Kissing Camels Drive described in Exhibit "B" attached hereto. Kissing Camels Property Owners Association joins in the execution of this Agreement for the purpose of this right of way grant only.

2. LEASE TERM. This Lease shall commence on September 15, 1978, and unless sooner terminated pursuant to the terms hereof, shall terminate and cease on September 15, 2033.

3. CONDOMINIUM CONVERSION AND FINANCING.

A. Tenant, at its sole expense, shall immediately commence to take all steps and action necessary or required under the laws of the State of Colorado to accomplish the conversion of the Units from apartments to condominiums; including, but not limited to, the filing and/or recording with the appropriate governmental authorities of all surveys, maps, declarations, agreements and any other instruments or documents necessary to finalize such conversion, and the preparation of all condominium owners documents required by law. Such condominium documents shall make clear to third party purchasers of condominium units that title to such units are subject to this Lease Agreement and shall further provide that Tenant and such third party purchaser shall indemnify and hold Landlord harmless from and against any loss or damage arising from any matter whatsoever in any way connected with the sale, ownership, use or occupancy of such condominium units. Tenant shall also, at its expense, make all improvements and repairs to the Leased Premises and the Units that may be necessary or required to accomplish such conversion and all such improvements shall be done in a good and workmanlike manner in compliance with all applicable laws, rules, orders and regulations.

B. Tenant shall have the right to mortgage or pledge,

to a bank, savings and loan association, insurance company or other institutional lender, Tenant's leasehold estate hereunder, as security for the payment of indebtedness of Tenant to such lender for financing obtained by Tenant to purchase the present improvements on the Leased Premises and to accomplish the conversion of the Units to condominiums. The terms and conditions of such financing and all documents evidencing same shall be fully acceptable to and approved in writing by Landlord; and provided that same are acceptable, Landlord will subordinate its fee title to the Leased Premises to the mortgage or lien securing such financing. Such financing documents and any financing documents covering a condominium purchased by a third party purchaser shall specifically provide that Landlord shall receive written notice of any default thereunder by Tenant or Unit owner, that Landlord shall have the opportunity to cure any such default and that Landlord shall have the exclusive right and option to purchase any Unit foreclosed upon pursuant thereto for an amount equal to the indebtedness then due such lender with respect to such Unit.

If any foreclosure of any deed of trust or mortgage given by Tenant or a purchaser of a condominium Unit occurs, and if there be a resulting loss of Landlord's fee title to all or any portion of the Leased Premises, due to Landlord's subordination of title as above provided, then as soon as such loss of title has become complete by expiration of Landlord's period of redemption from such foreclosure, it is agreed that there shall be immediately due and owing to Landlord by Tenant, on demand, as liquidated and agreed upon damages resulting from such foreclosure, the sum of Forty Thousand Dollars (\$40,000.00) per acre for all acreage lost by reason of such foreclosure. Tenant's failure to make any such payment within ten (10) days of demand therefor shall constitute a default hereunder by Tenant.

4. USE OF LEASED PREMISES - COMPLIANCE WITH LAWS AND ORDINANCES.

The Leased Premises and all improvements thereon shall be used by Tenant for a condominium project and uses directly related thereto, and for no other purpose or use, other than the presently existing apartment project, without first obtaining the prior written consent of Landlord. The Tenant covenants and agrees

that it will not use or suffer or permit the Leased Premises and such improvements to be used for any unlawful purpose, and that it will comply, at its sole cost and expense, with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, board and officers thereof. Tenant accepts the Leased Premises in the actual condition of the same as of the date of this Lease.

5. RENTAL.

A. Tenant shall pay to Landlord, as monthly ground rental, for the use and occupancy of the Leased Premises during the term of this Lease, the sum of Seven Hundred Thirty-five Dollars (\$735.00) per month, in advance, commencing on the sooner to occur of conversion to a condominium project, which is hereby defined as the 15th day of the month following the month in which the condominium declaration and maps are filed with the clerk and recorder of El Paso County, Colorado, or September 15, 1978, and continuing on the 15th day of each month thereafter during the entire term of this Lease.

B. On or before June 15, 1998, Landlord and Tenant shall endeavor to agree on a fair and reasonable adjustment with respect to the amount of the monthly ground rental to be paid for the period September 15, 1998, through September 15, 2008 such agreed ground rental to be based on the then current market value of the Leased Premises. If Landlord and Tenant fail to agree on such rental, the same shall be fixed by arbitrators who shall be appraisers selected either from the members of the American Institute of Real Estate Appraisers or from the Society of Real Estate Appraisers. Each party shall, by July 15, 1998, choose one such appraiser, and should either party fail to do so, the party choosing the first appraiser may name the second appraiser. The two appraisers so chosen shall select a third appraiser, and if they fail to do so, the selection of the third appraiser on application of either party may be made by the presiding Judge of the District Court in and for the Fourth Judicial District sitting in the County of El Paso, State of Colorado. The decision of such arbitrators shall be made by September 1, 1998, and such decision shall be final and conclusive upon the parties hereto, and enforceable as provided by the laws of the State of Colorado. Pending determination of said

monthly ground rental, Tenant shall continue to pay rental in amounts as provided for the prior period, said rental payments made prior to final arbitration to be adjusted to take into consideration the final arbitrated rental, which unpaid amount shall immediately become due and payable. In a like manner as provided for above, monthly ground rental payments shall be adjusted every ten (10) years following the initial adjustment in 1998, to be effective on September 15th of the years 2008, 2018 and 2028. If the parties fail to agree on any such adjustment, the arbitration procedure provided above shall be followed in any such instance.

C. In addition to the monthly ground rental to be paid by Tenant as provided for above, Tenant shall pay to Landlord, as additional rent a fee in accordance with the following such payment to be made within five (5) days following the closing of a sale of a condominium:

(i) Four Thousand Dollars (\$4,000.00) shall be paid to Landlord for each condominium Unit sold by Tenant between September 15, 1978 and September 15, 1981; PROVIDED, HOWEVER, that Landlord shall have been paid the sum of One Hundred Eight Thousand Dollars (\$108,000.00) by September 15, 1981, regardless of the number of condominium Units converted and sold by that date.

(ii) In the event all condominium Units have not been sold or the \$4,000.00 per unit fee paid by September 15, 1981 then Five Thousand Dollars (\$5,000.00) shall be paid to Landlord for each condominium Unit sold by Tenant between September 16, 1981 and September 15, 1983; PROVIDED, HOWEVER, that Landlord shall have been paid the sum of Five Thousand Dollars (\$5,000.00) per unit by September 15, 1983 for the remaining units on which no fee has been paid, regardless of the number of condominium Units converted and sold by that date.

(iii) Five Hundred Dollars (\$500.00) shall be paid to Landlord for each condominium Unit re-sold by the then owner of same following the initial sale of such Unit by Tenant.

(iv) Tenant shall keep complete and accurate books and records relating to all sales of condominium units and Landlord shall have the right to inspect same at all reasonable times

rent, and failure to pay the same upon demand by the Landlord shall constitute a default hereunder, provided, however, that notice of said default shall be given Tenant as provided in paragraph 14. It is expressly understood, however, that it shall not be obligatory upon the Landlord to so advance and pay such taxes, and Landlord may do so at its option or may treat the delinquency in the payment of the taxes as a default hereunder. Tenant further covenants and agrees to promptly and fully pay all assessments against the Leased Premises.

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9. LIABILITY INSURANCE AND COVENANTS TO PROTECT LANDLORD FROM LIABILITY.

Tenant covenants and agrees to protect, indemnify and hold harmless Landlord, as well as the Leased Premises, from and against each and every claim, demand, lien, loss and liability of whatsoever kind or character, at any time, made, asserted or claimed, by or on behalf of any person or persons against Landlord for or on account of any matter or thing, including injury to or death of any person or persons and damage to property occurring from any cause on or about the Leased Premises and the improvements thereon, erection or repair of same, or upon a sidewalk, street and premises adjacent thereto, or resulting from or arising out of, or in any way connected with the use and occupancy of the Leased Premises or any improvements thereon by Tenant, its servants, guests, patrons or purchasers, or resulting from, arising out of, or in any way connected with any noncompliance or miscompliance of Tenant or by any of its agents, servants or purchasers, of any law, ordinance, regulation or authority respecting the condition, use, occupancy, sanitation or safety of the Leased Premises or any part thereof.

Tenant shall, at its sole expense, at all times during the term of this Lease, cause to be maintained in full force and effect, a policy or policies of public liability insurance issued by such companies and in such amounts as may be in writing approved by Landlord, which approval will not be unreasonably withheld. Any such policy or policies shall name Landlord and Tenant as joint insureds and shall insure each of them against all claims or demands of any person or persons resulting from, arising out of, or in any way connected with the maintenance, use or occupancy

with the streets and sidewalks adjacent thereto. Said policy or policies or a certificate evidencing the issuance thereof, and a receipted statement showing the payments of the premiums shall be delivered to Landlord at or prior to the commencement of this Lease.

10. FIRE AND EXTENDED COVERAGE INSURANCE.

Tenant agrees and covenants that it will at all times during the term hereof, keep all buildings and improvements on the Leased Premises insured against fire and extended coverage, in such companies and in such amounts as may be approved in writing by Landlord, which approval shall not be unreasonably withheld, naming both Landlord and Tenant as insureds.

Tenant covenants and agrees that it will not do or permit anything to be done which will invalidate any insurance on or about or in any manner pertaining to any structure thereon; and further that it will not permit any building or appurtenances to be kept on said premises in condition so that the same will not be insurable.

Tenant further covenants and agrees that it will, upon demand, furnish Landlord with receipted bills or other evidence showing payment of premiums on all policies on such buildings.

11. ASSIGNMENT.

It is understood and agreed that Tenant shall not assign its interest in this Lease without the prior written approval of Landlord of the proposed assignee and the terms of such assignment, which approval shall not be unreasonably withheld, provided that Tenant shall remain liable for the payment of the rent herein reserved and for the performance of each and every term, condition, covenant and obligation of this Lease notwithstanding such assignment. Tenant (with Landlord's permission which shall not be unreasonably withheld) however, may assign this Lease Agreement to the Kissing Camels Condominium Owners Association which then will be responsible for the collection and payment of lease payments, taxes and the performance of the covenants contained in this Agreement.

12. CASUALTY AND RECONSTRUCTION.

It is understood and agreed that in the event of any casualty loss the net proceeds available from any insurance payment shall be used for the reconstruction and rebuilding of the improvements damaged, subject to the prior rights of any lien holder to such proceeds to the extent necessary to satisfy their claims.

13. EMINENT DOMAIN.

In the event the Leased Premises, or so much thereof that Tenant can no longer conduct its business profitably, shall be taken in any proceeding for condemnation or otherwise, or be acquired for public purposes, then this Lease shall be terminated. In the event of any such acquisition, and whether or not the Lease shall terminate, Tenant shall not be entitled to receive or have any part or portion of any damage or compensation which shall be paid to Landlord, irrespective of whether the same shall be so paid pursuant to a judgment of any court or to an agreement between Landlord and the power, agency or persons so acquiring the same, or otherwise.

Nothing in this provision shall be construed as to prevent Tenant making its claim against the condemning authority for any other damage or damages suffered, provided the same shall not affect the compensation to which Landlord is entitled pursuant to the provisions herein. Landlord covenants that Tenant will be given full opportunity to participate in all negotiations concerning any settlement.

14. DEFAULT AND FORFEITURE OF LEASE.

It is expressly understood and agreed by and between the parties hereto that if the monthly ground rent, or any other payment or charge required to be paid by Tenant hereunder, shall be in default or not paid when due, or if default shall be made in any of the covenants or agreements herein contained to be kept by Tenant hereunder, including payments due from Tenant to the holder of any lien or mortgage granted by Tenant, then Landlord, its successors, agents, attorney or assigns, may, at its election, after first giving to Tenant fifteen (15) days' notice in writing of its intention so to do, and if the default is not corrected within fifteen (15) days after service upon Tenant of such written notice of such default, declare this Lease terminated and may enter and repossess the Leased Premises or any part thereof, either with or without due process of law; and Tenant may be expelled, removed and put out, using such force as may be reasonable in so doing. If at any time the term hereof shall be ended at such election of Landlord, Tenant

hereby covenants and agrees to surrender and deliver up the Leased Premises peaceably to Landlord.

15. NOTICES.

Any notices required or permitted hereunder shall be served by certified mail addressed to Tenant at 410 Western Federal Savings Building, Colorado Springs, Colorado 80903, and to Landlord at 2500 First National Bank Building, Dallas, Texas, unless and until different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited as First Class matter in the United States Post Office, which shall be a valid and sufficient notice for all purposes.

16. CONDITIONS PRECEDENT.

This agreement is conditioned upon the occurrence of the acquisition by Tenant of title to all buildings and improvements situated on the Leased Premises.

In the event the foregoing condition has not occurred or been met by September 15, 1978, or within sixty (60) days thereafter, this Lease shall automatically terminate and neither party shall have any further obligations or rights hereunder.

17. SEWER SYSTEM.

Tenant anticipates that the owner and developer of an apartment project situated adjacent to the Leased Premises to be known as "Camels Ridge" will construct a sewer system to serve such project. Tenant agrees to use its best efforts to take all steps necessary to make arrangements for and complete, by September 15, 1979, the connection of such sewer system to the sewer system serving the Leased Premises.

18. GENERAL PROVISIONS.

A. No delay or omission by either party hereto in exercising any right or power occurring upon the noncompliance or failure of performance by the other party hereto under the provisions of this Lease shall impair any such right or power to be construed to be a waiver thereof. A waiver by either party

hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof.

B. Any alteration, change or modification of or to this Lease, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

C. This Lease shall be governed by and construed in accordance with, the laws of the State of Colorado.

D. If any term, provision, condition or covenant of this Lease or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

E. All of the covenants, agreements, conditions and restrictions set forth in this Lease are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and their successors and assigns.

F. Landlord, through Landlord's agents or representatives, shall have full right and authority to enter in and upon the Leased Premises at any and all reasonable times during the term of this Lease for the purpose of inspecting the same, without the interference or hindrance by the Tenant, or by Tenant's agents or representatives.

G. Upon the end of the term of this Lease, as provided herein, or any extension thereof, or sooner termination of this Lease, Tenant shall surrender to Landlord all and singular the Leased Premises and all improvements thereon, and Tenant shall execute, acknowledge and deliver to Landlord within five (5)

days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the Leased Premises.

H. In the event any action is brought by Landlord to recover any rent due and unpaid hereunder or to recover possession of the Leased Premises, or in the event any action is brought by Landlord or Tenant against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the court, together with costs of suit therein incurred.

I. Tenant agrees to pay a proportionate share of the cost of Guard and Protection service in the area. Tenant's present share shall be \$600.00 per month until September 15, 1979, at which time it will increase to \$750.00 per month, subject to periodic adjustment at such time as the cost thereof increases by ten percent (10%) or more.

LANDLORD:

HILL DEVELOPMENT CORPORATION

By *R. D. Hill* Pres.
Name Title

TENANT:

HILLCREST CORPORATION

By *J. W. Dunn* President
Name Title

KISSING CAMELS HOMEOWNERS ASSOCIATION

By *Theresa...*
Name Title

EXHIBIT APARCEL A:

That portion of the South Half of Section 26, in Township 13 South, Range 67 West of the 6th p.m., described as follows: Commencing at the extreme Southwesterly corner of Lot 13, Block 7 of Kissing Camels Subdivision No. 2, as recorded in Plat Book C-2 at Page 2 of the records of El Paso County, Colorado; thence on the boundary line of said Lot 13 as follows: Northeasterly on the arc of a curve to the left having a radius of 640 feet, a distance of 114.38 feet; thence angle right Southeasterly, a distance of 174.84 feet; thence leaving the boundary line of said Lot 13 angle left $97^{\circ}46'13''$ Northeasterly, a distance of 1514.10 feet; thence angle right $27^{\circ}59'16''$ Northeasterly, a distance of 601.14 feet to the Point of Beginning of the tract to be described hereby; thence angle left $22^{\circ}33'15''$ Northeasterly, a distance of 425.48 feet; thence angle right $101^{\circ}44'40''$ Southeasterly, a distance of 555.28 feet; thence angle right $94^{\circ}58'35''$ Southwesterly, a distance of 405.60 feet; thence angle right $83^{\circ}21'40''$ Northwesterly, a distance of 433.70 feet to the POINT OF BEGINNING.

PARCEL B:

That portion of the South half of Section 26, Township 13 South, Range 67 West of the 6th p.m., described as follows: Commencing at the extreme Southwesterly corner of Lot 13, Block 7 of Kissing Camels Subdivision No. 2, as recorded in Plat Book C-2 at Page 2 of the Records of El Paso County, Colorado; thence on the boundary line of said Lot 13 as follows: Northeasterly on the arc of a curve to the left, having a radius of 640 feet, a distance of 114.38 feet; thence angle right Southeasterly, a distance of 174.84 feet; thence leaving the boundary line of said Lot 13, angle left $97^{\circ}46'13''$ Northeasterly, a distance of 1514.10 feet; thence angle right $27^{\circ}59'16''$ Northeasterly, a distance of 601.14 feet; thence angle left $22^{\circ}35'15''$ Northeasterly a distance of 425.48 feet to the Point of Beginning of that tract of land herein described; thence angle right $18^{\circ}16'33''$ Northeasterly, a distance of 380.78 feet; thence angle right $110^{\circ}24'41''$ Southeasterly, a distance of 500.00 feet; thence angle right $39^{\circ}28'53''$ Southerly, a distance of 165.55 feet; thence angle right $113^{\circ}34'33''$ Northwesterly, a distance of 555.28 feet to the POINT OF BEGINNING.

PARCEL C:

A non-exclusive right of way for ingress and egress over and across that portion of the roadway known as Kissing Camels Drive described as follows:

A portion of Section 25 and of Section 26, in Township 13 South, Range 67 West of the 6th p.m., in El Paso County, Colorado, lying 40 feet on either side of the following described center line: Beginning at a point where the center line of Kissing Camels Drive intersects the Easterly line of Mesa Road as shown on the plat of Kissing Camels Subdivision No. 2 as recorded in Plat Book C-2 at Page 2 of the records of El Paso County, Colorado;

thence Northeasterly on said centerline 644.36 feet to a point of curve;
thence on a curve to the left whose radius is 600.00 feet an arc distance of 236.67 feet through a central angle of $22^{\circ}36'$ to a point of compound curve;
thence on a curve to the left whose radius is 571.65 feet an arc distance of 353.19 feet through a central angle of $35^{\circ}24'$ to a point of tangency;
thence tangent to the aforementioned curve 106.00 feet to the Southeast corner of Kissing Camels Subdivision No. 1 as recorded in Plat Book C-2 at Page 1 of the records of El Paso County, Colorado;
thence continue tangent to the last mentioned curve 114.63 feet to the Point of Curvature of a curve to the right whose radius is 468.03 feet through a central angle of $50^{\circ}04'$ an arc distance of 408.97 feet to the point of tangency of said curve, being also the Northeasterly corner of said Kissing Camels Subdivision No. 1;
thence on a curve to the right the radius of which is 1039.55 feet through a central angle of $27^{\circ}25'20''$ an arc distance of 497.50 feet to the point of tangency of said curve;
thence in a Northeasterly direction on the extension of the tangent of the last described curve a distance of 197.16 feet to the point of curvature of a curve to the left whose radius is 489.75 feet through a central angle of $44^{\circ}25'40''$ an arc distance of 379.72 feet to the point of tangency of said curve;
thence continue Northeasterly on the extension of the tangency of the last described curve a distance of 665.05 feet;
thence angle right $18^{\circ}16'33''$ a distance of 387.21 feet to the POINT OF TERMINATION.

EXHIBIT "B"

TO LEASE AGREEMENT DATED AUG. 4, 1978
BETWEEN HILL DEVELOPMENT CORPORATION AND
HILLCREST CORPORATION

A portion of Section 35 and of Section 26, in Township 13 South, Range 67 West of the 6th P.M. in El Paso County, Colorado, lying 40 feet on either side of the following described center line: Beginning at a point where the center line of Kissing Camels Drive intersects the Easterly line of Mesa Road as shown on the plat of Kissing Camels Subdivision No. 2 as recorded in Plat Book C-2 at Page 2 of the records of El Paso County, Colorado; thence Northeasterly on said center line 644.36 feet to a point of curve; thence on a curve to the left whose radius is 600.00 feet an arc distance of 236.67 feet through a central angle of $22^{\circ} 36'$ to a point of compound curve; thence on a curve to the left whose radius is 571.65 feet an arc distance of 353.19 feet through a central angle of $35^{\circ} 24'$ to a point of tangency; thence tangent to the aforementioned curve 106.00 feet to the Southeast corner of Kissing Camels Subdivision No. 1 as recorded in Plat Book C-2 at Page 1 of the records of El Paso County, Colorado; thence continue tangent to the last mentioned curve 114.63 feet to the point of curvature of a curve to the right whose radius is 468.03 feet through a central angle of $50^{\circ} 04'$ an arc distance of 408.97 feet to the point of tangency of said curve, being also the Northeast-erly corner of said Kissing Camels Subdivision No. 1; thence on a curve to the right the radius of which is 1039.55 feet through a central angle of $27^{\circ} 25' 20''$ an arc distance of 497.50 feet to the point of tangency of said curve; thence in a Northeasterly direction on the extension of the tangent of the last described curve a distance of 197.16 feet to the point of curvature of a curve to the left whose radius is 489.75 feet through a central angle of $44^{\circ} 25' 40''$ an arc distance of 379.72 feet to the point of tangency of said curve; thence continue Northeasterly on the extension of the tangency of the last described curve a distance of 683.61 feet to the point of termination.

COUNTY OF EL PASO STATE OF COLORADO
RECEIVED AT 2:01 O'CLOCK P.M. APR 19 1979
RECEPTION NO. 546685 ARDIS W. SCHMITZ DEPUTY

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ADDENDUM TO LEASE

WHEREAS, on or about August 4, 1978, HILL DEVELOPMENT CORPORATION, a Delaware corporation ("Landlord"), and HILLCREST CORPORATION, a Colorado corporation ("Tenant"), entered into a Lease Agreement relative to the real property described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Tenant is the owner of the buildings, improvements and fixtures presently situated on the Lease Premises; and

WHEREAS, it was the contemplation of the parties when they entered into said Lease, that said buildings, improvements and fixtures would be converted into condominium units in accordance with the laws of the State of Colorado; and

WHEREAS, in order to obtain financing for said condominium units, it is necessary for the aforesaid Lease to be amended by this Addendum so that said Lease will conform to the requirements of lenders and federal agencies which deal with lenders;

NOW, THEREFORE, it is hereby agreed as follows:

1. Conflict With Lease.

In the event any term of this Addendum conflicts with the aforesaid Lease, the terms of this Addendum shall prevail.

2. Condominium Conversion.

Upon the converting of the improvements to a condominium, and the recording of a Condominium Declaration for Kissing Camels Townhomes and a condominium map for Kissing Camels Townhomes, the leasehold estate shall be divided into forty-nine (49) separate undivided interests, each condominium unit having appurtenant to it an undivided interest in the leasehold estate in accordance with the percentages set forth on the Exhibit "B" to the Declaration for Kissing Camels Townhomes.

3. Mortgaging of Interest in Leasehold Estate.

Each owner of a condominium unit shall be entitled to mortgage his undivided interest in the leasehold estate as part of the mortgaging of a condominium unit, without the permission or approval of Landlord.

4. Assignment of Interest in Leasehold Estate.

Notwithstanding Paragraph 11 of the Lease, each owner of a condominium unit shall be entitled to assign, without the Landlord's approval, his undivided interest in the leasehold estate as part of a conveyance of the owner's condominium unit. Upon such an assignment, the condominium unit owner shall be released from any liability whatsoever under the terms of the Lease, provided however, this release from liability shall not include the Tenant.

5. Payment of Mortgagee Under Hazard Insurance.

Any mortgagee of a condominium unit situated on the leasehold estate shall be able to be an insured under any hazard insurance policy, and said mortgagee shall be entitled to payment of hazard insurance proceeds in accordance with the terms of the Condominium Declaration.

6. Notice of Default and Foreclosure.

(a) After the leasehold estate and improvements thereon are converted to a condominium, payments of the rental shall be made to the Landlord by the Condominium Homeowners Association, and each owner of a condominium unit shall be responsible to pay its monthly share of the rental under this Lease in accordance with each owner's percentage interest in the general common elements as set forth on Exhibit "B" of the Condominium Declaration. In the event an owner fails to pay his share of the rental hereunder by failing to pay his monthly general common element expense assessment to the Condominium Homeowners Association, then the Landlord shall receive immediate notice of that fact from the Condominium Homeowners Association together with the name of the defaulting owner and the legal description of the defaulting owner's condominium unit. The defaulting owner shall then be in default under the terms of Paragraph 14 of the Lease, and after giving fifteen (15) days' notice to the defaulting owner for failure to pay rent, or for failure to comply with any of the other terms in accordance with the terms of the Lease, and in the event said default is not cured by the owner within said fifteen (15) day period, the

owner's undivided interest in the leasehold estate shall terminate and title to the improvements shall revert to the Landlord. Provided, however, in the event the condominium unit of the defaulting owner is subject to an encumbrance of a mortgagee, the Landlord as part of the notice of the defaulting owner, must also give notice to the condominium unit mortgagee, and said condominium unit mortgagee shall be entitled to cure said default on behalf of the defaulting owner within twenty-five (25) days from the date of the default notice, as provided in Paragraph 14 of the Lease. In the event the default is of such a nature that it cannot be curable by the condominium unit mortgagee, and the defaulting owner's interest in the leasehold estate is terminated due to said default, then the Landlord will provide the condominium unit mortgagee with a new lease for said interest in the leasehold estate. Further, the present Tenant, Hillcrest Corporation, shall also be given notice of default by the Landlord, and if Hillcrest Corporation shall cure the default, and if Hillcrest Corporation is not reimbursed by the owner of the condominium unit within thirty (30) days from curing said defaults, then Hillcrest Corporation shall have such remedies as are provided by Colorado law against said condominium unit owner, provided, however, said rights shall always be subordinate to those of any condominium unit mortgagee and the Landlord.

(b) Upon foreclosure by a condominium unit mortgagee of the mortgage encumbering a condominium unit on the leasehold estate, notice of said foreclosure shall be given to the Landlord and the Landlord shall have the opportunity to cure such default or, at its option, the Landlord shall have the exclusive option to purchase any unit foreclosed upon for an amount equal to the indebtedness and foreclosure costs then due such mortgagee with respect to the foreclosed unit. In the event the Landlord does not cure the default or purchase the condominium unit within ninety (90) days after a Public Trustee's Deed has been issued to the mortgagee, the mortgagee shall acquire an undivided interest in the leasehold estate appurtenant to the condominium unit foreclosed upon within the condominium unit mortgagee's

name or a nominee of the condominium unit mortgagee.

7. Condemnation.

In the event of condemnation of the leasehold estate and the improvements constructed thereon, the Landlord's interest in the condemnation award must not be more than the value of the real property considered as unimproved, at the time of condemnation, with the remaining amount of the award going to the condominium unit owners. A condominium unit mortgagee shall be entitled to that portion of the condemnation award apportioned to the condominium unit upon which the condominium unit mortgagee has a mortgage.

8. Damage or Destruction.

(a) In the event of damage or destruction to the improvements on the leasehold estate due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements shall be utilized to promptly repair and reconstruct all damaged improvements and any damage to the leasehold estate.

(b) If the insurance proceeds are sufficient to repair and reconstruct the improvements, and if the damage is not more than fifty percent (50%) of the total value of all of the improvements, not including the real property, such damage or destruction shall be promptly repaired and reconstructed by the Tenant, or if the project is converted to a condominium, by the condominium unit owners.

(c) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is more than fifty percent (50%) of the total replacement costs of all the improvements, not including the real property, such damage or destruction shall be promptly repaired and reconstructed by the Tenant, or if the project is converted into a condominium, by the condominium unit owners, provided, however, the Tenant, or if the project is converted into a condominium, the condominium unit owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the common

elements and all of the mortgagees holding first mortgages on condominium units approve to said repair for reconstruction of the improvements in writing; and if the aforesaid approval to repair or reconstruct is not obtained, this Lease shall terminate, and all insurance proceeds shall be paid to the mortgagees of condominium units and condominium unit owners as is provided in this Addendum and the Condominium Declaration.

9. Binding Effect.

All other provisions of the Lease which are not in conflict with this Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, this Addendum was entered into between the Landlord and the Tenant on the 13 day of November, 1978.



HILLCREST CORPORATION,
a Colorado corporation

By J. Dale Duncan
J. Dale Duncan, President

Winston A. Parker
Winston A. Parker, Secretary

HILL DEVELOPMENT CORPORATION,
a Delaware corporation

By John M. Lambert
President



John M. Lambert

ADDENDUM TO LEASE

WHEREAS, on or about August 4, 1978, HILL DEVELOPMENT CORPORATION, a Delaware corporation ("Landlord"), and HILLCREST CORPORATION, a Colorado corporation ("Tenant"), entered into a Lease Agreement relative to the real property described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the aforesaid Lease Agreement was amended in accordance with an Addendum to Lease dated November 13, 1978; and

WHEREAS, the parties desire to further amend the Lease Agreement to protect third party purchasers of Condominium Units in accordance with the terms of the Lease Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. Conflict With Lease and Addendum to Lease.

In the event any term of this Addendum conflicts with the aforesaid Lease Agreement, or the terms of the Addendum dated November 13, 1978, the terms of this Addendum shall prevail.

2. Indemnity to Landlord.

Notwithstanding the provisions contained in Paragraph 3(A) of the Lease Agreement, relative to indemnifying and holding Landlord harmless from and against any loss or damage arising from any matter whatsoever in any way connected with the sale, ownership, use or occupancy of condominium units, said indemnity shall only be the liability of Tenant, Hillcrest Corporation, and shall not be the liability of any third party purchaser of a condominium unit. Provided, however, that upon a sale of a condominium unit, an Association known as Condominium Homeowners Association of Kissing Camels Townhomes shall be established and said Homeowners Association shall indemnify and hold Landlord harmless from and against any loss or damage in any way connected with the ownership, use or occupancy of any condominium unit and that the Association shall obtain public liability insurance with a primary or umbrella coverage in an amount not less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage and will name Landlord as an additional insured under the policy.

3. Liquidated Damages on Foreclosure of Underlying Deed of Trust.

Notwithstanding the provisions contained in Paragraph 3(B) of the Lease Agreement, relative to liquidated damages payable to the Landlord in the event of a foreclosure of a Deed of Trust which is subordinated to the Landlord's interest in the real property, said obligation shall only be the liability of Tenant (Hillcrest Corporation), and shall not be the liability of a third party purchaser of a condominium unit. Further, the failure of Tenant (Hillcrest Corporation) to pay said liquidated damages shall not cause a forfeiture of the Lease Agreement, but rather shall only be a personal obligation of Tenant (Hillcrest Corporation). Provided, however, Tenant's (Hillcrest Corporation) liability to pay liquidated damages shall be extinguished for each condominium unit upon the conveyance of each condominium unit to third party purchasers.

4. Condominium Conversion.

As set forth in Paragraph 2 of the Addendum to Lease dated November 13, 1978, the Leasehold Estate is to be divided into 49 separate undivided interests, each condominium unit having appurtenant to it an undivided interest in the Leasehold Estate. Landlord further agrees that in the event that there is a default of the Lease Agreement by one or more of the undivided interests in the Leasehold Estate, that said default will only apply to that particular interest in default, and said default will not constitute a default under the entire Lease or effect the other interest in the Leasehold Estate as is defined by the Condominium Declaration for Kissing Camels Townhomes.

5. Subordination by Landlord to Holder of First Deed of Trust.

In order to effectuate the provisions contained in Paragraph 3(B) of the Lease Agreement relative to the subordination by the Landlord of its fee title in order to obtain

financing for third party purchasers of Condominium Units,
the Landlord hereby agrees to join in the execution of first
Deeds of Trust which will contain the following limiting
language relative to Landlord:

This Deed of Trust is being executed by Hill Development Corporation only for the purpose of encumbering its reversionary interest in the real property being encumbered by this Deed of Trust, and does not create any personal liability pursuant to the Note secured hereby.

6. Binding Effect.

All other provisions of the Lease Agreement and the Addendum to the Lease dated November 13, 1978, which are not in conflict with this Addendum, shall remain in full force and effect.

IN WITNESS WHEREOF, this Addendum was entered into between the Landlord and the Tenant on the 24th day of March, 1979.

HILLCREST CORPORATION,
a Colorado Corporation

BY J. Dale Duncan
J. Dale Duncan, President



Walter A. Parker, Secretary

HILL DEVELOPMENT CORPORATION,
a Delaware Corporation

BY Lyle Hill
President



Lambert