

SANDS OF KAHANA

Amendment of Master Lease

TMK: 2-4-3-010-002

TG 99840

80-109475

RECORDATION REQUESTED BY:
*Cades Shutte Flemming
& Wright*

15060 426

AFTER RECORDATION, ADDRESSEE:
*Cades Shutte Flemming
& Wright
1000 Bishop St*

15060 426

When completed: Mail ()
Pickup () Phone: 521-9200

LESSOR'S CONSENT TO MORTGAGE
AND ESTOPPEL CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

A. Consent.

For TEN DOLLARS and other valuable consideration, HYADES BECHERT KIESEL, wife of Herbert H. Kiesel the "Lessor" named in that certain lease dated June 16, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Book 7836, Page 275, as amended by instruments dated May 9, 1972, and January 18, 1975, recorded in the Bureau of Conveyances in Book 9166 at Page 86 and Book 10394 at Page 537, respectively, and by that certain unrecorded Agreement: dated May 9, 1973 (such lease as so amended being hereinafter called the "Lease"), DOES HEREBY CONSENT to a mortgage (the "Mortgage") of the Lease by MYRON A. RESNICK, unmarried (the "Lessee-Mortgagor") to HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION, a federal savings and loan association (the "Mortgagee"); and for the foregoing consideration and as an essential inducement to the Mortgagee to make the \$39,000,000.00 loan secured by the Mortgage and to make future loans to be secured by mortgages of apartments in the condominium project to be

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developed on the land covered by the Lease, the Lessor and the Lessee-Mortgagor hereby mutually agree upon the following terms and conditions:

1. Enforcement of Mortgage. In the event of any default by the Lessee-Mortgagor under the mortgage, the Mortgagee shall have the right to enforce the Mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of the Mortgage may take possession of and rent the premises demised by the Lease, and upon foreclosure thereof or assignment of the Lease to the Mortgagee in lieu of foreclosure, the mortgagee may without further consent of the Lessor sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform all of the covenants of the lessee under the Lease, and such assignee may make a purchase money mortgage of the Lease to the Mortgagee, provided that upon execution of any such assignment or mortgage, a true copy thereof shall be delivered promptly to the Lessor and that no other or further assignment of the Lease for which any provision of the Lease requires the Lessor's written consent shall be made without such consent. The Mortgagee or any tenant of the Mortgagee pending foreclosure shall be liable to perform the obligations imposed upon the lessee by the Lease only during the period such party has possession or ownership of the leasehold estate. Nothing contained in the mortgage shall release or be deemed to relieve the Lessee-Mortgagor from the full and faithful observance and performance of the lessee's covenants under the Lease or from any liability for the nonobservance or non-performance thereof, nor be deemed to constitute a waiver of any rights of Lessor under the Lease, and the terms, covenants and conditions of the Lease shall control in case of

any conflict with the provisions of the Mortgage, except as herein set forth.

2. Protection of Mortgagee. The Lessor will not exercise the Lessor's right to terminate the Lease, or incur any expenses reimbursable by the lessee, by reason of the bankruptcy or insolvency of the Lessee-Mortgagor or because of the occurrence of any other default thereunder, if the Mortgagee, within one hundred twenty (120) days after the receipt of written notice from the Lessor of intention terminate the Lease for any such cause, shall either remedy such default, if the default is a monetary default, or, if such is not the case, shall undertake in writing to perform all covenants of the Lease reasonably capable of performance by the Mortgagee until such time as the Lease shall be assigned upon foreclosure or in lieu of foreclosure pursuant to the Mortgage or until such time as the default of the Lessee-Mortgagor shall have been cured. If such default shall be the failure of the Lessee-Mortgagor promptly to discharge or cause to be discharged any lien, charge or encumbrance which may be filed against the demised premises or any improvements thereon junior in priority to the Mortgage, the Mortgagee may remedy such default by effecting the foreclosure of the Mortgage, and such default shall be deemed to be remedied within such period of one hundred twenty (120) days if such foreclosure proceedings shall be instituted within such period and thereafter prosecuted in a diligent and timely manner.

3. Protection of Subleases. If at any time the Lease shall be terminated for any reason whatsoever (except condemnation prior to the expiration of the term specified therein, then every sublease which is in substantially the form of the Apartment Deed and Sublease attached hereto as

Exhibit A and made a part hereof (which form shall not be materially revised or amended without the consent of the Lessor) and which is not then in default shall survive and continue in full force and effect as a direct lease from the Lessor to the holder of such sublease, the Lessor being thereupon substituted in all respects for the Lessee-Mortgagor in such sublease, and every such holder shall upon receiving notice of such termination promptly attorn to the Lessor in place of the Lessee-Mortgagor under such sublease; provided, however, that (a), the holder of such sublease shall faithfully observe and perform all the terms, covenants and conditions thereof including, without limitation, the payment directly to the Lessor when due of all rents payable under such sublease for all periods from such notice of termination of the Lease for the remaining term of such sublease or, if the rent reserved in the Lease shall have been paid to the Lessor up to a date subsequent to the receipt of such notice, from such later date; (b) in case of any conflict between the provisions of the Lease and such sublease, the provisions of the sublease shall control; (c) all holders of subsisting subleases shall at all times during the remaining term thereof maintain one responsible corporate agent on their behalf to collect and pay over to the Lessor when due all rents, taxes and other charges thereunder payable to the Lessor; and (d) the subleases shall provide for rents which in the aggregate shall not be less than the rent reserved under the Lease.

A. Estoppel Certificate.

The Lessor hereby certifies to the Mortgagee that (1) the Lease is in full force and effect and unmodified, except as herein above provided; (2) to the best of the Lessor's knowledge, information and belief, the Lessee-Mortgagor is

not in default in the payment of rent under the Lease or in the performance or observance of any covenant or condition to be performed or observed by the lessee thereunder; (3) to the best of the Lessor's knowledge, information and belief, no event has occurred which authorizes, or with the lapse of time will authorize, the Lessor to terminate the Lease; (4) the execution and delivery by the Lessee-Mortgagor of the Mortgage will constitute neither a breach of the Lessee-Mortgagor's obligations as lessee under the Lease, nor an event of default thereunder; (5) a copy of any notice to be sent by the Lessor to the Lessee-Mortgagor pursuant to the Lease shall be sent by the Lessor to the Mortgagee; (6) the Lessor has approved the engineering and architectural plans and specifications (the "Plans and Specifications") more particularly identified in Exhibit B attached hereto and made a part hereof, prepared by BARRY A. RAND, ARCHITECT, INC., for The Sands of Kahana condominium project (the "Project") to be constructed on the premises demised by the Lease; (7) the Lessor has approved the construction contract in the form attached hereto as Exhibit C and made a part hereof, proposed for execution between West Maui Shore Investors and ASSOCIATED MASONS, LTD., relating to the construction of the Project; (8) construction of the improvements contemplated by the Plans and Specifications will satisfy the requirements of Article XII of "he Lease; (9) no further consent, approval or waivers by the Lessor and no further payments of any kind to the Lessor (except as may be required by Articles III and IV of the Lease) are necessary to permit construction, completion and use of the improvements contemplated by the Plans and Specifications; and (10) upon the Lessor's receipt of a true copy of the Mortgage, such Mortgage and the Mortgagee shall be entitled to all the

benefits and protections specified in the Lease for mortgagees, including amended paragraphs D and E of Article X of the Lease. Notwithstanding any language herein to the contrary, it is agreed and understood that Lessor has not exercised any control over the Project or any representations which may have been made in respect thereof and that nothing contained herein shall be deemed or construed to constitute any warranty or representation by the Lessor as to the adequacy or accuracy of the Plans and Specifications or the aforementioned contracts for their intended purposes, and the Lessor hereby disclaims and is released from any liability for any and all claims arising therefrom including, but not limited to, those on account of faulty or improper construction of the Project, latent defects, code violations in building improvements and non-compliance with the Declaration of Horizontal Property Regime and By-Laws for the Project.

This Consent is given on the understanding that no amendment to the Mortgage which will materially and adversely affect the interests of the Lessor shall be binding upon the Lessor without the Lessor's prior written consent; provided, however, that whether or not such consent is obtained, any amendment agreed to by the Mortgagor shall be binding upon the Mortgagor. The Lessor's consent shall not be unreasonably or capriciously withheld, nor shall the payment of any consideration for such consent be required. If the Lessor shall fail to respond in writing to any request for consent within ten (10) days after service of a written request therefor is completed in the same manner prescribed in paragraph C(8) of the Mortgage, at the Lessor's address of P. O. Box 248, Makawao, Maui, Hawaii 96768 (with a copy to Carlsmith, Carlsmith, Wichman & Case at P. O. Box 656, Honolulu, Hawaii 96809 (attention: Joseph T. Kiefer, Esq.)),

such consent shall conclusively be presumed to have been given.

As used herein, the terms "Lessor", "Lessee-Mortgagor" and "Mortgagee" shall mean and include the Lessor, the Lessee-Mortgagor and the Mortgagee named above and their respective heirs, personal representatives, successors, successors in trust and assigns. Where there is more than one Lessor, Lessee-Mortgagor or Mortgagee, the use of the singular shall be construed to include the plural wherever the context shall so require. The use of any gender herein shall include all genders.

IN WITNESS WHEREOF, the Lessor and the Lessee-Mortgagor executed these presents the 14th day of October, 1980.

Hyades Bechert Kiesel
HYADES BECHERT KIESEL

"Lessor"

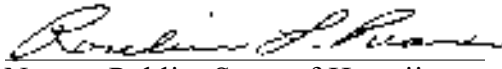
Myron A. Resnick
MYRON A. RESNICK

"Lessee"



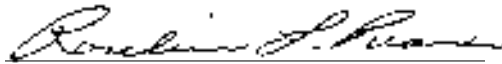
STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 14th day of October, 1980,
before me personally appeared HYADES BECHERT KIESEL,
to me known to be the person described in and who executed
the foregoing instrument, and acknowledged that he executed
the same as his free act and deed.


Notary Public, State of Hawaii
My commission expires: 2/12/84

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF SAND DIEGO)

On this 10th day of October, 1980,
before me personally appeared MYRON A. RESNICK, to me
known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed the
same as his free act and deed.


Notary Public, State of California
My commission expires: 4/11/83



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