

SANDS OF KAHANA  
Amendment of Master Lease  
TMK: 2-4-3-010-002

AMENDMENT OF LEASE

THIS INDENTURE is made this 3rd day of January 1984, but effective January 1, 1984, by and between HYADES BECHERT KIESEL, wife of Herbert H. Kiesel, whose residence address is Auoli Drive, Makawao, Maui, Hawaii, and whose post office address is P. O. Box 248, Makawao, Maui, Hawaii, 96768, ("Lessor"), and MYRON A. RESNICK ("RESNICK"), whose residence address is 4327 Lower Honoapiilani Highway, Lahaina, Maui, Hawaii, and whose post office address is P. O. Box 6, Lahaina, Maui, Hawaii 96767-0008 ("Lessee"),

W I T N E S S E T H:

WHEREAS, by Indenture of Lease dated June 16, 1971, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7836, Page 275 (the "Lease"), the Lessor leased to Lessee the real property therein described; and

WHEREAS, Lessor and Lessee amended the foregoing Lease by instruments dated May 9, 1973, recorded in said Bureau in Liber 9166, page 86, and January 18, 1975, recorded in said Bureau in Liber 10394, Page 537; and



WHEREAS, the parties hereto are desirous of further amending said Lease as set forth below;

NOW, THEREFORE, Lessor and Lessee agree that the Lease, as amended, is hereby further amended as follows:

1. Article III.A.4 is deleted in its entirety and replaced by the following:

4. Rent. Lessee shall pay unto the Lessor annual minimum and additional rents for the full remaining term of this Lease as follows:

(a) Minimum Rent. Lessee shall pay to the Lessor as annual minimum rent on the first day of June 1984, and on the first day of June of each and every year thereafter for the full term of this Lease, the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), which said sum shall represent minimum rent, paid in advance, for the calendar year next following the date on which said minimum rent is to be paid. Lessor acknowledges receipt of minimum rent for the calendar year ending December 31, 1984, and that Lessee's payment on June 1, 1984 will be applied to the minimum rent due for the calendar year commencing January 1, 1985.

(b) Additional Rent. In addition to the minimum rent payable pursuant to subparagraph 4(a) above, from and after the effective date hereof Lessee shall pay additional rent to Lessor throughout the remainder of the term of this Lease in an amount equal to fifteen percent (15%) of the net annual rentals accruing from and after the effective date hereof and

received by Lessee pursuant to those certain Apartment Deed and Subleases of portions of the land demised by this Lease entered into by Lessee from time to time.

For purposes of this paragraph, such net annual rentals shall be calculated and defined as follows:

All sublease rentals, including reimbursements for taxes or other levies, received by Lessee,

less the following:

(1) the FIFTY THOUSAND DOLLAR (\$50,000.00) annual minimum rent payable to Lessor pursuant to paragraph 4(a) above; pro-rated at the rate of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) per quarter; and

(2) all Hawaii State General Excise Taxes paid or payable by the Lessee on account of such sublease rentals, notwithstanding the fact that the sublease rentals received by the Lessee may include reimbursement for such Taxes; and

(3) any and all other taxes or levies which may be imposed by any local, state or federal governmental agency on account of the receipt of such sublease rents, except for local, state or federal income taxes.

All additional rent due to Lessor pursuant to this paragraph shall be paid quarterly to the Lessor as follows:

(i) On or before March 1, 1984, Lessee shall pay to Lessor fifteen percent (15%) of the net rentals received by Lessee up through

15, 1984 for the rentals due for the quarter commencing January 1, 1984;

(ii) On or before June 1, 1984 and on or before June 1 of every year thereafter during the term of this Lease, Lessee shall pay to Lessor fifteen percent (15%) of the net rentals received by Lessee during the period February 16 through May 15 immediately preceding;

(iii) On or before September 1, 1984 and on or before September 1 of every year thereafter during the term of this Lease, Lessee shall pay to Lessor fifteen percent (15%) of the net rentals received by Lessee during the period May 16 through August 15 immediately preceding;

(iv) On or before December 1, 1984 and on or before December 1 of every year thereafter during the term of this Lease, Lessee shall pay to Lessor fifteen percent (15%) of the net rentals received by Lessee during the period August 16 through November 15 immediately preceding; and

(v) On or before March 1, 1985 and on or before March 1 of every year thereafter during the term of this Lease, Lessee shall pay to Lessor fifteen percent (15%) of the net rentals received by Lessee during the period November 16 through February 15 immediately preceding.

(c) Records and Annual Statements. Lessee shall maintain and keep full and accurate records of

the rentals paid Lessee pursuant to said Apartment Deed and Subleases. and will retain and preserve such records for at least five (5) years after the submission of each certified annual statement described below, and permit Lessor to inspect such records at Lahaina, Maui, at any and all reasonable times during business hours. At least thirty (30) days prior to the beginning of each calendar year during the remaining term of the Lease, Lessee shall submit to Lessor an unaudited statement, certified to by Lessee as correct, showing in reasonable detail satisfactory to Lessor the total amount of rent (exclusive of the gross excise taxes thereon) due Lessee under the Apartment Deed and Subleases for each quarter of the next calendar year. Within sixty (60) days after the end of each calendar year during the remaining term of this Lease, Lessee shall submit to Lessor a statement, certified to by Lessee as correct, showing in reasonable detail the total amount of sublease rent paid to Lessee during the previous calendar year under the Apartment Deed and Subleases for each quarter of such year and the additional rents accruing to Lessor for that year. Any additional rents shown by such statements to be due Lessor shall be immediately paid to Lessor together with interest thereon at the rate of one percent (1%) per month (or such higher rate as shall be allowed by law from time to time) from the date(s) the additional rents were due until such additional rents are actually paid in full.

(d) Audit. The Lessor shall have the right to audit Lessee's annual certified statements for purposes of determining the additional rent. If such an audit shall result in an annual additional rent deficiency in excess of two percent (2%), the reasonable costs of the audit shall be borne by the Lessee; if said deficiency is two percent (2%) or less, the cost of the audit shall be borne by the Lessor. Lessor shall notify Lessee of its intention to audit any annual certified statement within five (5) years after Lessor's receipt of the same and said audit shall be completed within ninety (90) days after the date of such notice. Lessor shall provide Lessee with a copy of any such audit within thirty (30) days of its completion. The Lessor's right to audit shall include the taking of such steps as are generally deemed proper in auditing practices. If the audit shows any additional rents due Lessor from Lessee, Lessor shall notify Lessee in writing of the amount due within thirty (30) days of completion of the audit and Lessee shall, within thirty (30) days after receipt of such notice, pay Lessor the amount of such additional rents due with interest thereon at the rate of one percent (1%) per month (or such higher rate as may be allowed by law from time to time) from the date(s) the additional rents were due until such additional rents are actually paid in full.

(e) Covenants re Apartment Deed Subleases. Lessee hereby covenants and agrees with Lessor as follows:

(i) That the form of Apartment Deed and Subleases attached hereto as and incorporated herein by reference is a true and correct copy of the form of Apartment Deed and Sublease between Lessee and the purchasers of units in the condominium project located on the land demised by this Lease; and

(ii) That the terms of the Apartment Deed and Subleases will not be altered, modified or changed, nor will any Apartment Deed and Sublease be surrendered or cancelled by Lessee so as to affect Lessor's additional rent payments pursuant to paragraph 4(b) above, without the prior written consent of Lessor, which consent shall not be unreasonably withheld."


2. The form of Apartment Deed and Sublease attached hereto is added as Exhibit B to the Lease.

The Lessor and Lessee further agree that in all other respects said Lease, as herein and heretofore amended, shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor and Lessee have executed these presents effective as of January 1, 1984.

  
HYADES BECHERT KIESEL

"Lessor"

  
MYRON A. RESNICK

"Lessee"

STATE OF HAWAII )  
 :  
county of maui ) ss.

On this 3rd day of January 1984,  
before me 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.

[Signature]  
Notary Public, State of Hawaii

My Commission Expires: 4/6/95

STATE OF HAWAII )  
 :  
county of maui ) ss.

On this 3rd day of January 1984,  
before me 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  
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[Signature]  
Notary Public, State of Hawaii

My Commission Expires: 4/6/95