

SANDS OF KAHANA

Amendment of Master Lease

TMK: 2-4-3-010-002

RECORDATION REQUESTED BY:

UEOKA, NAEL, LUNA
ATTORNEYS AT LAW
2108 WILHELM STREET
WAILUO, MAUI, HAWAII 96791

11-102-11

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AFTER RECORDATION, RETURN TO:

UEOKA, NAEL, LUNA
ATTORNEYS AT LAW
2108 WILHELM STREET
WAILUO, MAUI, HAWAII 96791

1971 OCT -4 AM 8:58

[Signature]
REGISTRAR

RETURN BY: MAIL () PICKUP (x)

INDENTURE OF LEASE made and entered into
this 16th day of June, 1971, by and between HYADES
BECHERT KIESEL, wife of Herbert H. Kiesel,
of Honolulu, City and County of Honolulu, State of
Hawaii, hereinafter referred to as the "Lessor", and
MYRON A. RESNICK, whose place of residence and post
office address is Lahaina, Maui, Hawaii
hereinafter called the "Lessee",

W I T N E S S E T H :

THAT THE LESSOR AND THE LESSEE, for and in
consideration of the keeping by the parties of their respective
obligations hereinafter contained, as well as for TEN (\$10.00)
DOLLARS and other good and valuable considerations, each to the
other in hand paid simultaneously with the execution and delivery
of these presents, the receipt whereof is hereby acknowledged,
have AGREED as follows:

I.

DEMISE BY THE LESSOR:

A) UPON THE TERMS AND CONDITIONS
HEREINAFTER SET FORTH and in consideration of the payment,
from time to time, by the Lessee of the rents hereinafter set forth,

and in consideration of prompt performance continuously by the Lessee of each and every the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the performance of each and every of which is declared to be an integral part of the consideration to be furnished by the Lessee, the Lessor does hereby lease unto the Lessee, and the Lessee does hereby lease of and from the Lessor the following described property and promises;

All of those so certain parcels of real property, situate, lying and being at Kahananui, Kaanapali, Island and County of Maui, State of Hawaii, same being described as Lots 4-C consisting of 1.018 acres and Lot 4-D consisting of 6.301 acres of the Bechert Estate Subdivision, being a portion of Grant 1166 to D. Baldwin, J. F. Pogue and S. E. Bishop and R. P. 6231, L. C. Aw. 3925-I, Ap. 1 to Pala and R. P. 4177, L. C. Aw. 3925-D, Apana 2 to Hualii, situate at Kahananui, Kaanapali, Maui, State of Hawaii, and being identified by Tax Map Key No. 4-3-01-11; all as more fully described in Exhibit "A", attached hereto, and by reference incorporated herein and made a part hereof.

II.

DURATION OF TERM:

THE TERM AND DURATION OF THIS LEASE shall be for a period of SIXTY-FIVE (65) YEARS, beginning on the 1st day of July, 1971, and continuing up to and including the 30th day of June, 2036, unless and until this Lease shall be sooner terminated pursuant to any conditional limitation or condition hereinafter set forth.

III.

CONSIDERATION PAID BY THE LESSEE TO THE LESSOR:

A) IN CONSIDERATION OF THIS LEASE,

THE LESSEE AGREES TO PAY TO THE LESSOR, in lawful money of the United States of America, and at such place the Lessor shall from time to time designate in writing, rent as follows:

1) Upon the execution hereof by the Lessor, the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00), the receipt of which is hereby acknowledged, said sum being paid to the Lessor as and for rental during the first year of the term of this Lease;

2) Commencing on the 1st day of July, 1971, and on the 1st day of each and every month thereafter for the first seventeen (17) calendar months of the term of this Lease, the sum of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00) per month; which said sum shall represent rent paid, in advance, for each month in which same is paid;

3) Commencing on the 1st day of the eighteenth (18th) calendar month of this Lease, and on the 1st day of each and every calendar month thereafter to and including the 35th calendar month of the term of this Lease, the sum of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) per month, which said sum shall represent rent paid, in advance, for each month in which same is paid;

4) Commencing on the 1st day of June, 1974, and on the 1st 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 rent paid, in advance, for the calendar year following the date in which said rent is paid.

B) IN FURTHER CM CONSIDERATION OF THIS LEASE, THE LESSEE COVENANTS AND AGREES, that upon the development of the property leased and demised said hereby, said development to be carried out by one or more Limited Partnerships, the Lessor shall be a limited partner in each and every such Limited Partnership, having a ONE-TENTH INTEREST therein, and, as such limited partner, shall receive TEN PERCENT (10%) of the profits realized by each and every such Limited Partnership from the development of the said property, net after taxes; PROVIDED, HOWEVER that the Lessor shall not be required to pay any additional consideration to the Lessee or to any Limited Partnership, aforesaid, in respect of the above, other than the execution of this Lease; and PROVIDED, FURTHER, that the Lessor shall not be liable for any expenses, losses, or costs incurred by the Lessee or by any Limited Partnership in connection with the development of the said property or otherwise, of whatever kind and nature.

C) RENT SHALL BE PAYABLE AT SUCH PLACE as the Lessor may specify, in writing, from time to time, and a place, once specified as the place for the payment of rent, shall be such until it shall have been changed by written notice given unto the Lessee by the Lessor, in the manner hereinafter prescribed for the giving of notice. All rent shall be payable, without notice or demand.

D) ALL RENT SHALL BE PAYABLE IN CURRENT LEGAL tender of the United States, as the same is constituted by law at the time the said rent becomes due. Extensions indulgences or changes by the Lessor in the mode or time of payment of rent upon any occasion shall not be construed as any continuing waiver or change, or as a waiver of this provision of this paragraph, or as requiring any similar change or indulgence by the Lessor upon any subsequent occasion.

E) IT IS THE PURPOSE AND INTENT OF THE LESSOR AND LESSEE that the rent hereinabove provided to be paid to the Lessor by the Lessee, be absolutely not to Lessor, so this Lease shall, except as hereinafter provided to the contrary, yield net to Lessor the rent as hereinabove provided, to be paid in each year during the term of this Lease, and that all costs, expenses and obligations of every kind or nature whatsoever, relating to the demised premises, or any improvements thereon, which may arise or become due during the term of this Lease, shall be paid by the Lessee, and that the Lessor shall be indemnified and saved harmless by the Lessee from and against the same. It is understood and agreed that the Lessee shall pay and discharge temporary and permanent mortgages referred to in Article XIII hereof.

IV.

PROVISIONS REGARDING THE PAYMENT OF TAXES:

A) LESSEE COVENANTS AND AGREES WITH LESSOR that the Lessee shall pay, before any fine, penalty, interest or cost may be added thereto, at become due or be imposed by

operation of law for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen of any kind and nature whatsoever, which, at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of, or in respect of, or become a lien on, the demised premises or any improvements, thereon, or any part thereof or any appurtenance thereto, the rent and income received by Lessee from subtenants, any use or occupation of the demised premises, and such franchises as may be appurtenant to the use of the demised premises, or any document to which Lessee is a party, creating or transferring an interest or estate in the demised premises.

B) NOTHING HEREIN CONTAINED shall require Lessee to pay municipal, state or federal income taxes assessed against Lessor, municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of Lessor, corporation franchise taxes imposed upon any corporate owner of the fee of the demised premises; PROVIDED, HOWEVER, that, if at any time during the term of this Lease, the methods of taxation prevailing at the commencement of the term hereof shall be altered so as to cause the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the improvements thereon to be levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the rents received therefrom,

or of any tax, corporation franchise tax, assessments, levy (including, but not limited to any municipal, state or federal levy), imposition or charge, or any part thereof, shall be measured by or based in whole or in part upon the demised premises and shall be imposed upon Lessor, then all such taxes, assessments, levies, impositions or charges, or the part thereof so measured or based, shall be paid and discharged by Lessee.

C) THE PARTIES UNDERSTAND AND AGREE that the Lessee shall pay the taxes and other charges as enumerated in this Article of the Lease, and shall deliver official receipts evidencing such payment unto the Lessor, at the place at rental payments are required to be made. If, however, the Lessee desires to contest the validity of any tax or tax claim, the Lessee may do so without being in default hereunder as to the Lessee's obligation to pay taxes, provided the Lessee gives the Lessor notice of the Lessee's intention to do so and shall furnish to the Lessor evidence of payment of such tax or tax claim by Lessee under protest.

D) IN CASE THE LESSEE SHALL FAIL, REFUSE OR NEGLECT to make any or either of the payments in this Article required, then the Lessor may, at its option, pay the same, and the amount or amounts of money so paid, including reasonable attorney's fees and expenses which might have been reasonably incurred because of, or in connection with such payments, together with interest on all of such amounts, at the prevailing rate shall be repaid by the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner

as though said amount were an installment of rent specifically required by the terms of this Lease to be paid by the Lessee unto the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement thereof of and from the Lessee; but the election of the Lessor to pay such taxes shall not waive the default thus committed by the Lessee.

V.

LESSOR'S INTEREST NOT SUBJECT TO MECHANIC'S LIENS:

A) ALL PERSONS TO WHOM THESE PRESENTS MAY COME are put upon notice of the fact that the Lessee shall never, under any circumstances, have the power to subject the interest of the Lessor in the premises to any mechanic's or materialman's liens or lien of any kind, unless a specific provision to the contrary authorizing in specific terms the creation of such lien or liens, is elsewhere herein contained.

B) LESSEE COVENANTS AND AGREES WITH LESSOR that Lessee will not permit or suffer to be filed or claimed against the interest of the Lessor in the demised premises during the continuance of this Lease, any lien or claim of any kind (excepting for the mortgage referred to in Article XIII hereinafter contained), and if such lien be claimed or filed it shall be the duty of th Lessee, within thirty (30) days after the said Lessee receives notice that a claim shall have been filed of record, or within thirty (30) days after the Lessor shall have been given written notice of such claim and shall have transmitted written notice of the receipt of such claim unto the Lessee (whichever thirty (30) days period expires earlier) to cause the promises to be release from

such claim, either by payment or by the posting of bond or by the payment into court of the amount necessary to relieve and release the promises from such claim or in any other manner which, as a matter of law, will result, within the said period of thirty (30) days, in releasing the Lessor and the title of the Lessor from such claim; and the Lessee covenants and agrees, within said period of thirty (30) days, so as to cause the promises and th Lessor's interest therein to be released from th legal effect of such claim.

VI.

LESSOR'S LIEN FOR RENT:

A) THE LESSOR SHALL HAVE A FIRST LIEN, paramount to all others, except as hereinafter provided on every right and interest of the Lessee in and to this Lease, and on the buildings which may hereafter be on the promises, and permanent fixtures affixed thereto, which lien is granted for the purpose of securing the payment of rents, taxes, assessments, charges, liens, penalties and damages herein covenanted to be paid by the Lessee and for the purpose of securing the performance of any and all and singular the covenants, conditions and obligations of this Lease to be performed and observed by the Lessee, subject, only, to any mortgage made by the Lessor at the Lessee's request, pursuant to the terms herein.

VII.

INDEMNIFICATION OF LESSOR AGAINST LIABILITY:

A) LESSEE COVENANTS AND AGREES WITH LESSOR that, during the term of this Lease, the Lessee will indemnify and save harmless the Lessor against any and all claims, debts,

demands or obligations which may be made against the Lessor or against the Lessor's title in the premises, arising by reason of or in connection with the making of this Lease and the ownership by the Lessee of the interest created in the Lease hereby; and, if it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and attorney's fees incurred by the Lessor in affecting such defense, in addition to any other sums which the Lessor may be called upon to pay by reason of the entry of a judgment against Lessor in the litigation in which such claim is asserted, and the Lessee will cause to be maintained, a policy or policies of insurance in the form generally known as public liability and/or owner, landlord and tenant policies, in amounts not less than Five Hundred Thousand (\$500,000.00) Dollars for damages incurred or claimed by any one person and for not less than One Million (\$1,000,000.00) Dollars for damages incurred for claims by more than one person. All such policies shall name the Lessee and the Lessor, as their respective interests may appear, as the persons assured by such policy or policies and the original or a true copy of each of such policies shall be delivered by the Lessee unto the Lessor, immediately after the execution of this Lease Agreement, together with evidence of the fact that the premiums therefor are paid.

B) FROM AND AFTER THE COMMENCEMENT OF THE CONSTRUCTION OF A BUILDING, the Lessee will cause to be written a policy or policies of insurance in the form generally known as public liability and/or owners', landlord and tenant policies

and boiler insurance policies and elevator insurance policies, when there be boilers and elevators included in any improvements located on the demised premises, insuring the Lessee against any and all claims and demands made by any person or persons whomsoever, for injuries received in connection with the operation and maintenance of the improvements and buildings located on the demised premises or for any other risk insured against by such policies, each class of which policies shall have been written within limits of not less than Five Hundred Thousand (\$500,000.00) Dollars for damages incurred or claimed by any on person, and for not less than One Million (\$1,000,000.00) Dollars for damages incurred by more than one person. All such policies will name the Lessee and the Lessor, as their respective interests may appear, as the persons assured by such policy or policies, and the original or a copy of such policies, shall be delivered by the Lessee to the Lessor, promptly upon a the writing of such policy or policies, together with adequate evidence of the fact that the premiums therefor are paid.

VIII.

CASUALTY INSURANCE PROVISIONS:

A) LESSEE COVENANTS AND AGREES WITH LESSOR that Lessee will, at all times during the term of this Lease, keep insured any and all buildings and improvements upon said demised premises, and all personal property which the Lessee may bring or maintain upon the premises in order to comply with the terms of this Lease, in good and responsible, insurance companies authorized to do business in the County of

Maui, State of Hawaii, or in such companies as shall have been approved by any mortgagee then holding a mortgage encumbering the fee simple title to the demised premises, for the protection against all loss or damage to the said property by fire and wind-storm, or other casualty, by what is commonly known as a fire and extended coverage policy; and in amounts that will be sufficient to prevent co-insurance on the part of the Lessor or the Lessee, and all such policies shall be payable in the event of loss, jointly to the Lessor and the Lessee at their respective interests may appear.

B) FROM THE INCEPTION OR ANY CONSTRUCTION WORK which Lessee may effect on the demised premises, and as often as the Lessee may construct a building or make a substantial alteration in a building, the Lessee will cause adequate insurance policies to be written in compliance with the provisions of the foregoing paragraphs.

C) IN THE EVENT OF THE DESTRUCTION OF THE SAID buildings or improvements by fire, windstorm or other casualty for which the insurance will be payable, and as often as such insurance money shall be paid to the Lessor and the Lessee and mortgagee, if any, said sums so paid shall be deposited in a joint account of the Lessor and the Lessee in a bank in the County of Maui, State of Hawaii, and shall be available to the Lessee for the reconstruction or repair, as the case may be, of any building or buildings damaged or destroyed by fire, windstorm or other casualty for which insurance money shall be payable, and shall be paid out from said joint account from time to time; PROVIDED, HOWEVER, that it first be made to appear to the satisfaction of the Lessor that the amount of money necessary for the reconstruction

or repair and refurnishing of any building or buildings destroyed or injured, as aforesaid, according to the plans adopted therefor, has been provided by the Lessee for such purpose, and its application for such purpose assured; and the Lessee covenants and agrees that in the event of the destruction or damage of the buildings or improvements, or any part thereof, and as often as any building or improvement on said premises shall be destroyed or damaged by fire, windstorm or other casualty, the Lessee shall rebuild and repair the same in such manner that the buildings improvements so rebuilt and repaired shall be at least of the same value as the building or buildings or improvements upon the demised premises, prior to such damage or destruction, and same shall be ready for occupancy within a reasonable period.

D) THE ORIGINALS OF ALL SUCH POLICIES shall be delivered to the Lessor by the Lessee along with the receipted bills evidencing the fact that the premiums thereof are paid; but nothing herein contained shall be construed as prohibiting the Lessee from financing the premiums where the terms of the policies are for three (3) years or more, and, in such event, the receipts shall evidence it to be the fact that the installment premium payment or payments are paid at or before their respective maturities. Where, however, there is a mortgage on the premises created pursuant to the provisions contained in Article XIII of the Lease, which is captioned "LESSOR'S JOINDER IN MORTGAGES", if, under the terms of such mortgage or mortgages, it is obligatory upon the Lessee to cause the originals of said policies to be delivered to the mortgagee, then the Lessee shall deliver such originals to

the mortgage and shall deliver to the Lessor copies of such policies. This said policies or copies thereof, as th case may be, shall be delivered by the Lessee to the Lessor, immediately after the writing and effective date of said policies.

E) IF, AT ANY TIME, ANY SUCH INSURANCE MONEY comes into the possession of the Lessor and the Lessee after destruction or damage by fire or windstorm, or other casualty, and the Lessee is in default in the payment of rent, taxes, assessments, liens or other charges which, by the terms of this lease had been agreed to be paid by th Lessee, or if such default should occur during the time said insurance money or any part thereof is in the joint bank account as aforesaid, then the Lessor shall be entitled to receive all of the insurance money, except as herein provided. NOTHING HEREIN CONTAINED, however, shall be construed as permitting the Lessee to default in the payment of rent or other charges herein stipulated to be paid, or in the performance of the other covenants in this Lessee and the Lessor may, at its option, in case of default in the payment of rent or other charges or default in the performance of any other covenant in this Lease, proceed against the Lessee for th collection of such rental and charges and recover the take possession of the premises herein described in accordance with the provisions of this Lease, herein set forth, and without prejudice to its rights to the benefit of such insurance money. All of the provisions herein contained relative to the disposition of payments from insurance companies are subject to the fact that if any mortgagee who holds a mortgage created pursuant

to the provisions of Article XIII hereof, elects, in accordance with the terms of such mortgage, to require that the proceeds of such insurance be paid to the mortgages on account of the mortgage, then such payment shall be made, but in such event it shall to obligatory upon tho Lessee to create the complete fund in the manner set forth in this Article to assure and complete the payment for the work of reconstruction and repair.

F) IT IS AGREED BY AND BETWEEN THE LESSOR and the Lessee that any excess of money received from insurance, remaining in the joint bank account after the reconstruction or repair of such building or buildings, if there be no default on the part of the Lessee in the performance of the covenants herein, shall be paid to said Lessee, and, in case of the Lessee's not entering into the reconstruction or repair of said building or buildings, within a reasonable period from the date of the loss, after damage or destruction occasioned by fire, windstorm or other cause for which insurance money shall be payable, and complete same within a reasonable period from said date, then the amount so collected, or the balance thereof remaining in the joint account, an the case say be, shall be paid to the Lessor, and it will be at the Lessor's option to terminate the Lease and retain such amount as liquidated and agreed upon damages resulting from the failure of the Lessee to promptly, within the time specified, complete late such work of reconstruction and repair.

G) IN SPITE OF THE PROVISIONS OF PARAGRAPH "E" AND "G" just hereinabove set forth, still the parties understand and agree that if the loss, as evidenced by th

amount of the insurance award, is for not more than ten percent (10%) of the total coverage of that class of insurance, the amount of such insurance award shall be paid directly over to the Lessee; but nothing herein contained shall be construed as varying or altering the Lessee's obligations to cause restoration of the premises to be done promptly and otherwise in accordance with the terms of this Lease.

IX.

LESSEE'S DUTY TO PAY INSURANCE PREMIUMS:

A) LESSEE COVENANTS AND AGREES WITH LESSOR that Lessee will pay the premiums for all insurance policies which Lessee is obligated to carry under the term of this Lease and will deliver to the Lessor evidence of such payment before the payment of any such premiums become in default; and the Lessee will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to the Lessor, before the expiration date of such expiring policies.

B) NOTHING HEREIN CONTAINED SHALL EVER BE construed as rendering the Lessor personally liable for the payment of any such insurance premiums, but, if at any time during the continuance of this Lease, the Lessee shall fail, refuse or neglect to procure any of the policies of insurance required in and by this instrument to be procured by the Lessee or to keep and maintain the same in full force and effect, or to pay the premiums therefor promptly when due, the Lessor may, at its option, procure or renew such insurance and, thereupon, the amount or amounts of money paid as the premium or premium

thereon, plus interest at the rate of six percent (60) per annual, shall be collectible as though it were rent then matured hereunder and shall be due and payable forthwith, or in lieu thereof, and notwithstanding the procurement and renewal of such policies by the Lessor, this Indenture and the terms created hereby may, at th option of the Lessor be terminated and declared at an and, and all of the right, estate and interest of the Lessee in such event hereunder shall immediately cease and become null and void.

X.

ASSIGNMENT:

NO ASSIGNMENT NOR SUBLEASE OF THIS LEASE, nor of any part or portion hereof or of the property hereby leased and demised, may be mad by the Lessee, unless the Lessee shall have first obtained the express consent of the Lessor thereto in writing, PROVIDED , however, that such consent shall not be unreasonably withheld by the Lessor. Any assignment or sublease made without the consent of the Lessor as herein provided shall be null, void and of no effect whatsoever.

XI.

CONDEMNATION CLAUSE:

A) IT IS FURTHER UNDERSTOOD AND AGREED that if, at any time during the continuance of this Lease, the demised real estate or the improvements or building or buildings located thereon, or any portion thereof, be taken or appropriated or condemned by reason of the eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the

rent and other adjustments made as shall be just and equitable under the circumstances. ALTHOUGH THE TITLE TO THE BUILDING OR BUILDING and improvements, placed by the Lessee upon the demised premises, will pass to the Lessor, nevertheless, for purposes of condemnation, the fact that the Lessee placed such buildings on the demised premises shall be taken into account and the deprivation of the Lessee of the use of such buildings and improvements shall, pro tanto, be an item of damage in determining the portion of the condemnation award to which the Lessee is entitled. In general, it is the intent of this paragraph that, upon condemnation, the parties hereto shall share in their awards, to the extent that their interests, respectively, are depreciated, damaged or destroyed by the exercise of the right of eminent domain. If the Lessor and the Lessee are unable to agree upon what division, annual abatement of rent or other adjustments are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy in the County of Maui, State of Hawaii, for its decision and determination of the matters in dispute. If the legal title to the entire premises be wholly taken by condemnation, then and in such event any further obligation of either of the parties hereto to the other by reason hereof shall be terminated as of the date of such taking, save and except such rights, duties and liabilities as have matured or accrued prior to such date.

XII.

LESSEE'S OBLIGATION TO BUILD:

- A) On or before the 31st day of December, 1976,

the Lessee shall submit to the Lessor for its approval, which approval shall not be unreasonably withhold or delayed, plans and specifications for the construction on the demised promises of a structure or structures, suitable for use as an apartment building, a condominium apartment building, a hotel building, or other, substantially similar, use. After the plans and specifications have been approved and before construction in begun, the Lessee shall also submit to the Lessor for its approval, which approval shall not be unreasonably withheld or delayed, t following;

1) A copy of any written construction agreement with a general contractor which the Lessee proposes to execute (or, if no general contractor is to be used, a copy of each proposed written agreement with the various individual contractors).

B) On or before the 31st day of December, 1977, the Lessee shall begin construction of the structure and of parking facilities on the demised promises. The Lessee shall pursue the work to completion with diligence.

C) The Lessee shall not authorize variances from the plans or specifications approved by the Lessor without the Lessor's prior written approval if such variances would increase or decrease the total cost of construction by more than ten percent (10%).

D) The Lessee shall deliver to the Lessor each of the following on the completion date:

1) A certificate of completion stating that all work has been completed in compliance with the approved plans and specifications.

XIII.

SUBORDINATION CLAUSE:

A) THE LESSEE SHALL BE PRIVILEGED to construct buildings or a building as herein fore described, and the Lessor agrees that it will, upon th circumstances and subject to the texas contained in this paragraph, subordinate Lessor's fee a simple title in and to the demised promises, by joining with the Lessee in the execution of either or both of the two following mortgages:

- 1) A "temporary construction mortgage"; or
- 2) A "permanent mortgage".

B) THE "TEMPORARY CONSTRUCTION MORTGAGE" will be the mortgage which the Lessee obtains in order to provide funds to be and become a part of the building fund and to be used in conjunction with the making of payments for the work as it progresses; but the Lessee may require the joinder by the Lessor in the temporary construction mortgage only if:

- 1) Such requirement is made in writing by the Lessee or t Lessor before any work of construction is started; and
- 2) The proceeds of the temporary construction mortgage are paid into the building fund; and
- 3) The building fund, itself, is completed simultaneously with the creation of the temporary construction mortgage; and
- 4) The Loan shall have first procured a commitment from a leader approved in writing by the Lessor, which approval shall not be arbitrarily withholds to make

the mortgage and shall, simultaneously with the joinder by the Lessor in the temporary construction mortgage, assign the commitment to the Lessor upon the condition that if the Lessee, defaults in the building obligation, the Lessor, may have the benefit of the permanent mortgage committed to be made; and

5) The maturity of such temporary construction mortgage is such that it is sufficiently remote to permit time for the completion of the construction and the closing of the permanent mortgage and its maturity is such that it may be paid off and retired out of the proceeds of the closing of the permanent mortgage; and

6) The commitment to make the permanent mortgage itself permits a sufficient length of time before the time when the commitment obligates the Lessee to close the loan or else lose the commitment to accomplish the completion of construction work; and

7) The temporary construction mortgagee must be a lender, approved in writing by the Lessor, which approval shall not be arbitrarily withheld; and

8) Any mortgage which the Lessee fails to characterize in writing as a temporary construction mortgage before the commencement of the work or which fails to comply with any and all of the foregoing conditions shall be

deemed to be the permanent mortgage; and, thereupon, the Lessee shall be conclusively presumed to have waived the right to require the joinder by the Lessor in the temporary construction mortgage. The amount of the temporary construction mortgage cannot be greater than the amount of the commitment to make the out mortgage.

C) THE "PERMANENT MORTGAGE" is the mortgage which will accomplish the Lessee's "permanent financing", distinguished from the temporary construction mortgage; and, in order to require the Lessor to join in the execution of the permanent mortgage, the Lessee must comply with the following requirements with reference to such permanent mortgage, to wit:

1) The lender-mortgagee must be a lender approved in writing by the Lessor, which approval shall not be arbitrarily withheld; and

2) The said permanent mortgage shall bear interest at a rate not to exceed the best obtainable rate as of the date of the said mortgage, and the final payment shall not mature later than thirty (30) years after the date of the mortgage (and that there shall be no renewals, substitutions or extensions of said mortgage unless the Lessor shall give express consent thereto in writing); and

3) The amount of the mortgage for a building constructed as above described shall not exceed the actual cost of the building to be constructed by the LESSEE on the demised promises.

4) The "actual cost of the building", as the term is used herein means the total bona fide cost of constructing th building and the parts of it which by their nature immediately become incorporated in the job and any other permanent structures or improvements in conjunction therewith, including, but not limited to, cabanas, sea walls, and a swimming pool or pools, and become real property, as distinguished from being or remaining personal or mixed property.

D) BOTH THE TEMPORARY CONSTRUCTION MORTGAGE and the permanent mortgage shall contain a provision that the mortgagee recognizes it to be the fact that the subordination of Lessor's fee simple title by joinder of the Lessor in the mortgage is purely for the purpose of creating a mortgage lien against the property encumbered by it and that no personal liability shall ever attach to or personal judgment be sought against the Lessor by reason of the Lessor's joinder in the mortgage; and, therefore, the Lessor need not join in the note or bond which the mortgage secures.

E) THE LESSEE SHALL, at its own cost and expense, comply with all of the terms, covenants and conditions on the part of the mortgagor to be performed, contained in the aforesaid temporary and/or permanent mortgage above set forth.

F) BOTH THE TEMPORARY CONSTRUCTION MORTGAGE AND THE PERMANENT MORTGAGE, aforesaid, shall contain the following provisions:

1) “The Mortgagee covenants and agrees that in case at any time default shall be made by the Lessee-Mortgagor in respect of any of the covenants, conditions or obligations of this Mortgage, then if the Mortgagee elects to foreclose upon the mortgaged premises, the Mortgagee shall first foreclose upon the leasehold interest of the Lessee, and said Mortgagee shall have the right to foreclose upon the fee title of the Lessor-Mortgagor if and only if the proceeds realized by the Mortgagee from foreclosure upon the leasehold interest of the Lessee-Mortgagor shall be insufficient to satisfy the indebtedness due and owing to the Mortgagee.”

2) “No foreclosure shall be instituted by the Mortgagee against the fee title interest of the Lessor-Mortgagor, for any default in respect of the covenants, conditions and obligations of this Mortgage, unless and until the Mortgagee shall first have given sixty (60) days notice in writing of such default to both the Lessor-Mortgagor and to the Lessee-Mortgagor. and shall have given either of said Parties opportunity to cure such default.

G) IT IS UNDERSTOOD and agreed that the development of the property leased and demised hereby may be carried out in stages or increments, and the Lessor agrees to subordinate

the fee simple title, as and in the manner provided in this Article, to such mortgages as shall be necessary to secure financing of each of each stages or increments, provided that:

- 1) Lessee submits to the Lessor a general plan of all or such stages or increments prior to the execution by the Lessor of any mortgage, as he sin provided, for the financing of the first such stage or increment;
- 2) no such mortgage shall be executed nor shall any such stage or increment of said development be commenced more than sixty (60) calendar months after the date of execution of the mortgage for the first stage or increment of said development.
- 3) each such mortgage is made as and in the manner provided by this Article.

XIV.

DEFAULT CLAUSE:

- A) IT IS FURTHER COVENANTED, AND AGREED

by and between the parties hereto that in case at any time default shall be made by the Lessee in the payment of any of the rent herein provided for upon the day said rent becomes due and payable, or the payment of the security payments, as hereinabove provided for, or in case of default in relation to liens, as hereinabove provided for, or if the Lessee shall fail to pay any of the taxes or assessments herein provided for, or in case of the sale or forfeiture of said demised premises, or any part thereof, during said demised term for non-payment of any tax or assessment, or in case the Lessee shall fail to keep insured any building, buildings or improvements which may at any time hereafter be upon the said premises, as herein provided for, or shall fail to spend insurance money, as herein provided for, or shall fail to build or rebuild, as herein provided for, or if the Lessee shall fail to keep any mortgage having a priority over this lease, in good standing in the manner herein provided for, or if the Lessee shall fail to perform any of the covenants of this Lease by it to be kept and performed, then, in any of such events, it shall and may be lawful for the Lessor, upon election, to declare said demised term, ended and to re-enter upon said premises and the building or buildings and improvements situated thereon, or any part therefor or therefrom or thereof, either with or without process of law, the said Lessee hereby waiving any demand for possession of said premises and any and all buildings and improvements then situated thereon, or the Lessor may have such other remedy as the law and this instrument may afford; and the Lessee covenants and agrees that upon the termination of said demised term, at such election of the said Lessor, or in any other way, the Lessee, will surrender and deliver up the said premises and

property (real and personal) peaceably to the Lessor, or the agent or attorney of the Lessor, immediately upon the termination of the demised term; and if the Lessee, its agent, attorney, tenants shall hold the said premises, or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of said premises under the statutes and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

B) THOUGH THIS BE A LONG TERM LEASE, the parties understand and agree that the relationship between them is that of landlord and tenant, and the Lessee specifically acknowledges that all statutory proceedings in the State of Hawaii regulating the relationship of landlord and tenant respecting the collection of rent or possession of the premises, accrue to the Lessor hereunder.

C) NOTHING HEREIN CONTAINED shall be construed authorizing the Lessor to declare this Lease in default, however, where the default consists in the non-payment of rent or taxes until such non-payment, in violation of the terms of this Lease, shall have continued for thirty (30) days after written notice of such default shall have been given by the Lessor to the Lessee and where the alleged default consists of some violation other than the non-payment of rent or taxes, Lessor may not declare this Lease in default until such violation shall have continued for thirty (30) days after the Lessor shall have given the Lessee written notice of such violation; PROVIDED, however, that nothing herein contained shall be construed as precluding the Lessor from having such remedy as may be and become necessary in order to preserve the Lessor's right and the

interest of the Lessor in the promises and in this Lease, even before the expiration of the grace or notice periods provided for in this Paragraph, if under particular circumstances then existing the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the Lessor in this Lease and in the demised premises.

D) ALL DEFAULT AND GRACE PERIODS shall be deemed to run concurrently and not consecutively.

E) IT IS MUTUALLY COVENANTED AND AGREED that the various rights, powers, options, elections, privileges and remedies of the Lessor contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

F) IT IS FURTHER COVENANTED AND AGREED by and between the parties hereto that the right given to the Lessor in this Lease to collect the rent that may be due under the terms of this Lease by any proceedings under the same or the right to collect any additional rent, money or payments due under the terms of this Lease by any proceedings under the same, or the right given the Lessor to enforce any of the term and provisions of this Lease, shall not in any way effect the right of such Lessor to declare this Lease void and the term created hereby ended, as herein provided, when default is made in the payment of said rent, or when the default is made by the Lessee in any of the terms and provisions of the Lease. The Lessee shall pay the Lessor all costs of court and reasonable e attorney's fees which the Lessor may pay or is obligated to pay in connection with the enforcement of this Lease by reason of the failure of the Lessee promptly to observe and keep any or all of its

conditions, covenants and agreements.

G) IT IS FURTHER COVENANTED AND AGREED by and between the parties hereto, in the event of the termination of this Lease, at any time before the expiration of the term hereby created for the breach of any of th covenants herein contained, that in such case all of the right, estate and interest of the Lessee in and under this Indenture and in the demised premises hereinabove described and all improvements, buildings and the Lessee's interest in all fixtures mad affixed equipment then situated in the said demised promises, together with all rents, issues and profits of said premises and the improvement thereon, whether then accrued or to accrue and all insurance policies and all insurance monies paid or payable thereunder shall, without any compensation made therefor unto the Lessee, at once pass to and become the property of the Lessor, not as a penalty for forfeiture, but as liquidated damages to the Lessor because of such default by the Lessee, hereby fixed and agreed upon between the parties hereto, each of the parties hereto recognizing the impossibility of precisely ascertaining the amount of damage that will be sustained by the Lessor in consequence of such default, and the parties desiring to obviate any question or dispute concerning the amount of such damage and the cause and effect of such default in consequence of such forfeiture, have taken those elements into consideration in fixing and agreeing upon the amount of rent to be paid by the Losses to the Lessor.

H) THE LESSEE PLEDGES WITH, AND ASSIGNS UNTO, the Lessor all of the rents, issues and profits which might otherwise accrue to the Lessee for the use, enjoyment and operation of the demised promises and, in connection with

such pledging of the rents, the Lessee covenants and agrees with the Lessor that if the Lessor, upon the default of the Lessee, elects, to file suit to enforce the Lease and protect the Lessor's rights thereunder, then the Lessor may, as ancillary to such suit, apply to any court having jurisdiction thereof for the appointment of a receiver of all ??? singular the demised premises, the improvements and buildings located thereon; and, thereupon, it is expressly covenanted and agreed that the court shall forthwith, appoint a receiver with the usual powers and duties of receivers in like cases and such appointment shall be mad by such court as a matter of strict right to the Lessor and without reference to adequacy or inadequacy of the value of the property which is subject to the Landlord's lien or to the solvency or insolvency of the Lessee and without reference to the commission of waste. Nothing in this Paragraph contained shall be construed as empowering the Lessor to collect rents accruing from the premises, unless and until the Lessee is in default.

I) IF THE LESSEE SHALL FILE A PETITION for bankruptcy, or shall be adjudged a bankrupt, or make an assignment for the benefit of creditors, or should there be appointed a receiver on the ground of insolvency, only, for, or against the Lessee, to take charge of the premises, either in the state court or in the federal court, then, in any of such events, the Lessor may, at its option, terminate and end this Lease, and re-enter, without the necessity for giving notice of taking legal proceedings to accomplish such re-entry upon the property, whereupon the terms hereby granted and at the Lessor's option, all right, title and interest under it shall end, and the Lessee shall become a tenant at sufferance, or the said Lessor may take

possession of the premises and rent the same for the account of the Lessee, the exercise of any of which options herein contained shall not be deemed the exclusive Lessor's remedy.

XV.

LESSEE'S DUTY TO KEEP PREMISES IN GOOD REPAIR:

A) LESSEE COVENANTS AND AGREES WITH THE LESSOR that throughout the term of this Lease, Lessee, at its sole cost and expenses, will take good care of the demised premises and the improvements thereon and the sidewalks, curbs and vaults adjoining the demised premises, if any, if and when the obligation to maintain then is imposed by governmental authority and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural, non-structural, ordinary and extraordinary, and unforeseen and foreseen. When used in this Article, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by the Lessee shall be equal in quality and class to the original work.

B) THE NECESSITY FOR AND ADEQUACY OF REPAIRS to any building, pursuant to this Article, shall be measured by the standard which is appropriate for buildings of similar construction and class, provided that Lessee shall in any event make all repairs necessary to avoid any structural damage or injury to any building.

C) LESSEE SHALL PUT, KEEP AND MAINTAIN all portions of the demised premises and the sidewalks, curbs and passageways adjoining the same in a clean and orderly condition, free of dirt, rubbish and unlawful obstructions.

D) LESSOR SHALL NOT BE REQUIRED to furnish

any services or facilities or to make any repairs or alterations in or to the demised premises and the improvements thereon. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the demised premises sea, and the improvements thereon.

XVI.

DEMOLITION CLAUSE:

A) ALTHOUGH IT IS THE LESSEE'S DUTY under the terms hereof to keep and maintain any buildings and improvements on the demised premises in good repair, this shall not be construed as empowering the Lessee to tear down and destroy any building or buildings hereafter on the demised premises, or any substantial part thereof, or to cause any item of major repair and construction to be made, unless and until the Lessee:

1) Causes plans for the new building or the new construction to be prepared in full accordance with all applicable laws, building codes, zoning ordinances, statutes and regulations and delivers the plans to the Lessor, at least thirty (30) days before the work proposed to be done pursuant thereto is actually commenced; and

2) Furnishes the Lessor with what is generally known as a completion bond with corporate surety, guaranteeing the doing and completion of the said work, or, in lieu of furnishing the said bond;

3) Creates an escrow fund with any bank or trust company then doing business in the State of Hawaii, selected by the Lessee, into which there

shall be paid by the Lessee the full cost of the work of repair and replacement, which cost shall be evidenced by th bona fide bid of a general contractor or the aggregate of the bona fide bids and estimates of sub-contractors and materialmen, all of which evidence must be submitted by the Lessee to the Lessor, not later than thirty (30) days before the work itself starts, which escrow fund will be utilized to pay for the work as it progresses upon the requisition of the contractor and the certificate of an architect supervising the work, but disbursements from which escrow fund will be made upon the written order of the Lesser and the Lessee, the Lessor being bound, if said Lessor elects to exercise such joint control over the escrow fund, to approve progress payments promptly so long as the balance remaining in the escrow fund is sufficient to cause the work to be carried through to completion and paid for and full and final waivers and releases procured from all persons who furnish work, labor, services and/or material to the job.

B) IN ANY EVENT, THE WORK OF RECONSTRUCTION, repair and replacement, including fixtures must have a value of not less than the value of the building or buildings, or the portion thereof then being demolished and replaced and repaired, and the fixtures being discarded.

C) FOR THE PURPOSE OF THIS SECTION OF THE LEASE, no work will be deemed a “demolition” or a “major repair” so as to bring it within the terms of this section of the Lease,

unless it constitutes either the actual destruction of a building or a substantial part thereof, or unless it constitutes a remodeling which, in substance, requires the tearing down of a substantial part of a building. In general, this section of th Lease is intended to apply wherever the work which the Lessee proposes to do is of such a nature that the doing of the work necessitates a substantial improvement of the then existing building.

XVII.

ADDITIONAL COVENANTS OF THE LEASE:

A) LESSEE COVENANTS AND AGREES WITH LESSOR that it will use the premises for legal purposes only.

B) LESSEE COVENANTS AND AGREES WITH LESSOR that no damage or destruction to any building or improvements by fire, windstorm, or any other casualty shall be deemed to entitle the Lessee to surrender possession of the promises or to terminate this Lease or to violate any of its provisions or to cause any rebate in the rent then due or thereafter becoming due under the terms hereof; and if the Lease be cancelled for the Lessee's default at any time where there remains outstanding any obligation from the insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within Lease, be deemed immediately to become the absolute and unconditional property of the Lessor.

C) LESSEE COVENANTS AND AGREES WITH LESSOR that nothing in this Lease contained shall ever be construed as empowering the Lessee to encumber or cause the Lessor to encumber the title or interest of the Lessor, except as herein expressly provided.

D) LESSEE COVENANTS AND AGREES WITH LESSOR that at the termination of this Lease, the Lessee will peaceably and quietly deliver possession of the premises and all improvements, including fixtures and affixed equipment thereof, Unto the Lessor.

E) LESSEE COVENANTS AND AGREES WITH LESSOR that should the Lessor be made a party to any litigation commenced by or against the Lessee, without fault on the part of the Lessor, the Lessee shall pay all costs and expenses including reasonable attorney's fees incurred by or against the Lessor or in connection with the litigation, and th Lessee shall also pay all costs and reasonable attorneys' fees incurred by or against the Lessor in enforcing the terms, provisions and covenants of this Lease, or in terminating this Lease by reason of the Lessee's default; provided, however, that the Lessee shall be liable to the Lessor for costs and attorneys' fees in respect of litigation as aforesaid only in the event that the Lessor should prevail in same.

All such costs and reasonable attorneys' fees paid by the Lessor and all taxes and assessments, and the payment of all moneys provided in this Lease to be made by the Lessee, shall, if paid by the Lessor, be additional rent due on the last day after service of notice of such payment or payments, together with interest at the rate prevailing from the date of payment, and shall be collected as any other rent specifically reserved in this Lease.

But if the Lessor shall be made a party to any litigation by reason of any independent liability of the Lessor caused by some act or omission on the part of the Lessor and not resulting from any act or omission of the Lessee or from the execution of the Lease by the Lessor, then the Lessee shall not be responsible for any such costs and expenses.

XVIII.

COVENANT OF QUIET ENJOYMENT:

LESSOR COVENANTS AND AGREES WITH LESSEE that so long as the Lessee keeps and perform all of the covenants and conditions by the Lessee to be kept and performed, th Lessee shall have quiet and undisturbed and continued possession of the premises, freed from any claims against the Lessor and all persons claiming under, by, or through the Lessor.

XIX.

LESSOR'S RIGHT OF ENTRY:

THE LESSOR, OR THE AGENTS OF SAID LESSOR, shall have the right to enter upon the promises at all reasonable times to examine the condition and use thereof, PROVIDED, ONLY, that such rights shall be exercised in such manner as not to interfere with the Lessee in the conduct of the Lessee's business on said promises, And if the said promises are damaged by fire, windstorm, or by any other casualty which caused the premises to be exposed to the elements, then the Lessor may enter upon the promises to make emergency repairs, but if the Lessor exercised the option to make emergency repairs, such act or acts shall not be deemed to excuse the Lessee from its obligation to keep the premises in repair, and the Lessee shall, upon the demand of the Lessor, reimburse the Lessor for the cost and expense of such emergency repairs.

XX.

MISCELLANEOUS PROVISIONS:

IT IS MUTUALLY COVENANTED AND AGREED BY AND between the parties, as follows:

A) That no waiver of a breach of any of the covenants in this Lease contained shall be construed to be a waiver of any succeeding breach of the same covenant.

B) That time is of the essence in every particular, and particularly where the obligation to pay money is involved.

C) That all arrearages in the payment of rent shall bear interest, from the date when due and payable at the rate of eight per coat (8%) per annum until paid.

D) That no modification, release, discharge or waiver of any provisions hereof shall be of any force, effect or value unless in writing, signed by th Lessor or the duly authorized agent of said Lessor.

E) That all covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach to and be binding upon the successors, legal representatives and assigns of each of the parties to this Lease.

F) That this instrument contains the entire agreement between them as of this date and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are no collateral agreements, stipulations, promises or understandings whatsoever upon the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G) That when either of the parties desires to give notice unto the other or others in connection with and according to the terms of this Lease, such notice shall be given by registered mail, and it shall be deemed given when it shall have been deposited in the United States Registered Mails, with sufficient postage

prepaid thereon to carry it to its addressed destination.

Where the parties on either side (Lessor and Lessee) consist of more than one (1) person, notice unto or default by one (1) of the persons on that side shall constitute notice or default by all of the persons on that side, provided that, if the Lessee shall be a Limited Partnership, notice or default as aforesaid shall be to or by one of the general partners of such Limited Partnership.

H) THE LESSOR MAKES NO REPRESENTATIONS WHATEVER as to the use to which the premises may now be put, or to which the premises may hereafter be put.

I) THROUGHOUT THE TERM OF THIS LEASE, Lessee, at its sole cost and expense, will comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments, courts, departments, commissions, boards and officers, and all orders, rules and regulations of the National Board of Fire Underwriters, and of any other body or board of sovereign concurrently or successively exercising similar functions, and any other lawful authority having jurisdiction over the demised premises or the buildings and improvements, now or hereafter erected and maintained thereon, including both interior and exterior portions of the demised premises and of any buildings, improvements now or hereafter erected or maintained thereon and the streets, sidewalks, vaults, passages, and space surrounding the same, sub-surface as well as at or above ground level, and the appurtenances, franchises and privileges connected therewith, whether or not such requirements of law, rules, orders, ordinances, regulations or zoning regulations so involved shall necessitate structural change, improvements, interferences with use and enjoyment of the demised

premises, replacements, or repairs, extraordinary as well as ordinary, and Lessee will so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or zoning regulations shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations or zoning regulations can be said to be within the present contemplation of the parties hereto; and Lessee shall and does hereby indemnify and agree to save and hold harmless Lessor against and from any and all loss, liability, claims, damages, costs and expenses of suit, interest, fines and penalties which Lessor may suffer or incur arising out of Lessee's failure to comply with any of such laws, rules, orders, ordinances, regulations or zoning regulations and from failure to keep the demised premises, and all improvements thereon, in a safe and lawful condition or to use the same in accordance with law.

J) LESSEE SHALL LIKEWISE OBSERVE AND COMPLY with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the demised premises.

K) AS USED HEREIN, the demised premises shall mean the vacant property demised hereunder and all improvements hereafter located thereon.

L) THE TERMS "LESSOR" AND "LESSEE" AS USED herein shall be construed to mean either the singular or the plural, masculine or feminine, or any person, persons, firm or corporation, collectively or individually, and their respective heirs, legal representatives, successors or assigns, whenever the context so requires or admits.

M) LESSEE WILL INDEMNIFY AND SAVE LESSOR HARMLESS against and from all liabilities, obligations, damages, penalties, judgments, costs, charges and expenses, including reasonable architects' and attorneys' fees, which may be imposed upon or incurred by Lessor by reason of any of the following occurring during the term of this Lease:

- 1) Any work or thing done in, on, or about the demised premises, or any part thereof;
- 2) Any use, non-use possession, occupation, condition, operation, maintenance or management of the demised premises, or any part thereof, or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;
- 3) Any negligence on the part of Lessee, or any of its agents, contractors, servants, employees, licensees or invitees;
- 4) Any accident, injury or damage to any person or property occurring in, on or about the demised premises, or any part thereof, or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;
- 5) Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

N) IF THE LESSEE FAILS OR REFUSES to pay its rent in and if, as a result of such a default on the part of the Lessee, the Lessor elects to institute appropriate proceedings

against the Lessee to collect the rent due, then, and in such an event, the Lessee waives any defense, effect or counterclaim it may have in such a suit for the collection of rent other than the defense of its possession of the premises being interfered with unlawfully, but nothing herein contained shall prevent the Lessee from establishing any defense that it may have other than the interference with its possession in any independent action or actions, which independent action or actions it may either prosecute or defend.

O) THE LESSEE SHALL PAY all costs and expenses incurred in connection with this transaction, including the attorney's fees of the Lessee in connection with the preparation, execution and recordation of this Lease, all recording fees and all conveyance taxes imposed hereon, and all real property taxes due on the above demised property as of the date hereof.

P) In the event that, at any time during the term hereof, the interest either of the Lessor or the Lessee should devolve upon two or more persons, then and in such event such persons, being the successors in interest of the Lessor or the Lessee shall designate one person as representative of their respective interest, to represent, such interest in any and all matters concerning this Lease.

IN WITNESS WHEREOF, the parties have caused these presents to be signed, the day and year first above written

LESSOR:

Hyades Bechert Kiesel
Hyades Bechert Kiesel

LESSEE:

Myron A. Resnick
Myron A. Resnick

1607936 me316

STATE OF HAWAII)
COUNTY OF MAUI) SS:

On this 16th day of June, 1971, before me personally appeared HYADES BECHERT KIESEL, to me known to be the person described in and who executed th foregoing instrument, and &acknowledged that she executed th same as her free act and deed.

Frank F. (C.A.) Sam
Notary Public, Second Judicial
Circuit, State of Hawaii.

My commission expires: 4/24/75

STATE OF HAWAII)
COUNTY OF MAUI) SS:

On this 16th day of June, 1971, before me personally appeared MYRON A. RESNICK, to me known to be the person describe in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Frank F. (C.A.) Sam
Notary Public, Second Judicial
Circuit, State of Hawaii.

My commission expires: 4/24/75



EXHIBIT "A"

FIRST:

All of that certain parcel of land known as LOT 4-D of the BECHERT ESTATE SUBDIVISION, being portions of Grant 1166 to D. Baldwin, J. F. Pogue and S. E. Bishop and R. P. 6231, L. C. Aw. 3925-I Ap. 1 to Pala and R. P. 4177, L. C. Aw. 3925-D Apana 2 to Hualii, situate at Kahananui, Kaanapali, Island and County of Maui, State of Hawaii, and thus bounded and described:

Beginning at the southeasterly corner of this parcel of land, on the westerly side of Honoapiilani Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Haweia" being:

12,332.82 feet South
4,568.61 feet West

and running by azimuths measured clockwise from true South:

1. 100° 04' 30" 279.62 feet along Lot 5 to a point;
Thence along seashore for the next 3 courses;
2. 196° 14' 30" 43.25 feet
3. 181° 39' 30" 203.63 feet
4. 182° 51' 30" 275.71 feet
5. 280° 04' 30" 626.83 feet along Lot 4-C to a point;
6. 2° 47' 30" 123.65 feet along the westerly side of Honoapiilani Highway to a point;
7. 12° 09' 00" 52.44 feet along same to a point;
8. 26° 07' 00" 64.45 feet along same to a point;
9. 36° 57' 30" 32.58 feet along same to a point;
10. 43° 06' 30" 62.21 feet along same to a point;
11. 54° 22' 30" 48.57 feet along same to a point;
12. 57° 36' 30" 83.20 feet along same to a point;
13. 62° 06' 30" 176.88 feet along same to a point of beginning and containing an area of 6.301 acres, or thereabouts;

SECOND:

All of that certain parcel of land known as LOT 4-C of the BECHERT ESTATE SUBDIVISION, being portions of Grant 1166 to D. Baldwin, J. F. Pogue and S. E. Bishop, R. P. 6231, L. C. Aw. 3925-I Ap. 1 to Pala and R. P. 4177, L. C. Aw. 3925-D Apana 2 to Hualii, situate at Kahananui, Kaanapali aforesaid, and thus bounded and described:

Beginning at a point on the northeasterly side of this parcel of land, on the westerly side of Honoapiilani Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Haweia" being:

12,332.82 feet South
4,568.61 feet West

and running by azimuths measured clockwise from true South:

1. 359° 03' 00" 3.01 feet along the westerly side of Honoapiilani Highway to a point;
2. 2° 47' 30" 68.35 feet along same to a point;
3. 100° 04' 30" 626.83 feet along Lot 4-D to a point;
4. 182° 51' 30" 71.32 feet along seashore to a point;
5. 280° 04' 30" 626.83 feet along Lot 4-B to a point of beginning and containing an area of 1.018 acres, or thereabouts;

SUBJECT, HOWEVER, to:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent Nos. 4177 and 6231 and in Royal Patent Grant No. 1166;

2. The location of the seaward boundaries of said lands as affected by the law of the State of Hawaii.