

THIS INDENTURE OF LEASE, made this 22nd day of February, 1978, effective as of December 1, 1977, by and between the TRUSTEES OF THE LILIUOKALANI TRUST, whose place of business and post office address is 161 South King Street, Honolulu, Hawaii, and KAWAIAHAO CHURCH, a Hawaii eleemosynary corporation, hereinafter collectively referred to as the "Lessor", and BANYAN ONE, INC., a Hawaii corporation, the principal place of business and post office address of which is 2513 Kuhio Avenue, Honolulu, Hawaii, hereinafter called the "Lessee",

W I T N E S S E T H

WHEREAS, the Trustees are the owners in fee simple of the real property described in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, Kawaiahao is the owner of the real property described in Exhibit "B", attached hereto and incorporated herein by reference; and

NOW, THEREFORE, the Lessor, in consideration of the rent hereinafter reserved and of the covenants contained herein on the part of the Lessee to be observed and performed, does hereby demise and lease unto the Lessee. and the Lessee does hereby accept and hire from the Lessor the premises described in Exhibits "A" and "B" attached hereto and by reference made a part hereof.

RESERVING, HOWEVER, unto the Lessor the right at its expense to delineate and grant perpetual easements and rights of way to appropriate governmental authorities or utility companies over, under, across and through the demised premises for sewer, water, electrical power, telephone, gas, drainage and flowage and other similar public service purposes, including the right to enter the demised premises for the construction.

reconstruction, installation, maintenance and operation of facilities and equipment in connection with such easements; provided, however, that such easements and rights of

way shall not unreasonably interfere with the use of the premises by the Lessee; and provided further, if such grants of easements or rights of way shall not be for the use and benefit of the demised premises they shall not materially detract from the value of the premises. The Lessee agrees to join in such grants upon the request of the Lessor.

TO HAVE AND TO HOLD the demised premises, together with the rights, easements, privileges and appurtenances thereunto belonging or appertaining unto the Lessee for a term of fifty-eight (58) years, commencing on December 1, 1977 and terminating on November 30, 2035, unless the term shall be sooner terminated as hereinafter provided, the Lessee YIELDING AND PAYING unto the Lessor during the term, rent in the amounts and in the manner as follows:

(a) For the first year of the term commencing on December 1, 1977 and ending on November 30, 1978, the amount of TWO HUNDRED TWENTY-ONE THOUSAND DOLLARS (\$221,000.00) per annum;

(b) For the second year of the term commencing on December 1, 1978 and ending on November 30, 1979, the amount of TWO HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$295,000.00) per annum;

(c) For the next eleven years of the term commencing on December 1, 1979 and ending on November 30, 1990, the amount of TWO HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$295,000.00) per annum;

(d) For the next ten years of the term commencing on December 1, 1990 and ending on November 30, 2000, the amount of THREE HUNDRED NINETY THOUSAND DOLLARS (\$390,000.00) per annum;

(e) For the next ten years of the term commencing on December 1, 2000 and ending on November 30, 2010, the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per annum;

(f) The net annual rent for each of the subsequent ten-year period and the final fifteen-year period of the term thereafter successively ensuing shall be an amount equal to seven percent (7%) of the fair market value of the land exclusive of improvements and as if unencumbered by this lease. In the event the Lessor and Lessee shall fail to agree in writing to such rental at least ninety (90) days before the commencement of each successive period, the net annual rent shall be determined by the appraisal procedure set forth in paragraph 18 of this lease but in no event shall the rent be less than that payable for the immediately preceding rental period. If the rent has not been determined by the commencement of the period in question, the Lessee shall pay to the Lessor on account thereof rent in the same amount and in the same manner as was payable for the year immediately preceding the commencement of the period in question. Within thirty (30) days after the rental has been determined, the Lessee shall pay the Lessor all additional amounts due by reason of such determination, together with interest thereon at a rate equal to three percent (3%) over the prime rate of interest established by the Bank of Hawaii for its large commercial borrowers, as determined, as to each installment of additional rent payable, as of the due date thereof; provided, further, that such interest rate shall in no event exceed the maximum rate permitted under any applicable law.

All such rent shall be net above taxes, assessments and charges of any kind, payable in equal quarterly installments, each in advance, on the first day of January, April, July and October in every year during said term; PROVIDED, HOWEVER, that the first such payment shall be prorated to the next rental due date and paid upon execution hereof.

The Lessor hereby covenants with the Lessee that upon payment of the rent as aforesaid and upon the observance and performance of all the covenants and conditions herein contained and on the part of the Lessee to be observed and performed, the Lessee shall peaceably hold and enjoy the premises for the term demised without hindrance or

interruption by the Lessor or any other person lawfully claiming by, through or under the Lessor, except as expressly provided otherwise herein.

The Lessee, in consideration of this demise and the covenants of the Lessor, hereby covenants and agrees with the Lessor as follows:

1. RENT. The Lessee will pay the rent in legal tender of the United States of America to the Lessor at the address set forth above or at such other address as the Lessor may from time to time designate in writing to the Lessee at the times and in the manner previously set forth and without any deduction, notice or demand.

2. TAXES AND ASSESSMENTS. The Lessee will also pay to the Lessor as additional rent, at least ten (10) days before they become delinquent, all taxes and assessments of every description to which the premises or any part thereof or improvements thereon or the Lessor or Lessee in respect thereof are now or during the term may be assessed or become liable, whether assessed to or payable by the Lessor or Lessee, including without limiting the generality of the foregoing, all real and personal property taxes or assessments and all general or other excise taxes, (but excluding Lessor's net income taxes) payable by reason of the Lessee's payment hereunder of rent, taxes, or any other outgoing of any description, whether actually or constructively received by the Lessor; provided, however, that such taxes shall be prorated between the Lessor and Lessee as of the commencement and expiration, respectively, of the term and provided, further, that with respect to any assessment made under any betterment or improvement law which may be payable in installments of principal together with interest on the unpaid balances as shall become due and payable during the term.

3. RATES AND OTHER CHARGES. The Lessee will also pay directly, all charges, duties, rates and other outgoings of every description for electricity, gas, telephone, refuse collection, sewage disposal, water or any other utilities or services to which the premises, or any part thereof or improvements thereon or the Lessor or Lessee in respect thereof

may during the term be assessed or become liable, whether assessed to or payable by the Lessor or Lessee. and whether assessed by governmental authority or public or private firm, corporation or association.

4. REQUIRED IMPROVEMENTS. The Lessee will also at his own expense make, build and maintain and rebuild all fences, sewers, drains, roads, walls, curbs, sidewalks and parking areas which may during the term be required by law or private agreement to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the premises in whole or in part. In the event any such improvements shall be built, maintained or rebuilt by the Lessor, the Lessee shall promptly reimburse the Lessor for the cost thereof.

5. OBSERVANCE OF LAWS: WASTE. The Lessee will observe and perform all laws, ordinances, rules and regulations now or hereafter imposed by any governmental authority which are applicable to the premises or any improvement thereon, or use thereof and all recorded protective covenants and restrictions affecting the premises. The Lessee will at all times during the term keep the premises in a strictly clean, orderly and sanitary condition. The Lessee will not at any time make or suffer any strip or waste, or unlawful, improper or offensive use of the premises. The Lessee will indemnify the Lessor against all claims and demands for loss or damage and all actions or proceedings by whomsoever brought or made by reason of the non-observance or non-performance of the covenants of this paragraph by the Lessee or any person claiming by, through or under him.

6. REPAIR AND MAINTENANCE. The Lessee will at his own expense at all times during the term cause the premises to be well and substantially repaired, maintained, amended and kept in good and sound condition with all necessary reparations and amendments and will maintain and keep the premises and all adjacent land between any street boundary of the premises and the established curb or street line in a neat and attractive condition.

7. INSPECTION. The Lessee will permit the Lessor and his agents to enter the premises and examine the state of repair and condition at all reasonable times during the term. The Lessee will repair those defects required by this lease to be repaired by the Lessee within thirty (30) days after notice to repair shall have been given by the Lessor or his agents. In default, the Lessor may cause such repairs to be made and shall not be liable to Lessee for any resulting loss or damage and the Lessee agrees to reimburse the Lessor for all costs of repair together with interest thereon at the rate of twelve percent (12%) per annum accruing from the date the Lessor incurs the expense until paid by the Lessee.

8. TERMS OF DEVELOPMENT:

(a) Obligation to Develop. Within the first three (3) years of the demised term of this lease, the Lessee shall construct and complete a high quality building or buildings on the demised premises suitable for use in accordance with applicable zoning laws, ordinances, rules and regulations.

(b) Development Plans. Prior to the commencement of any demolition or construction of improvements on the properties and not later than nine (9) months after the date hereof the Lessee shall submit to the Lessor for approval (i) a precise and detailed master plan for the development of the entire demised premises, showing the exact location and character of all uses; (ii) an artist's rendering of all improvements to be constructed; (iii) plot plans and working drawings and specifications sufficiently detailed for obtaining firm bids for construction prepared by a licensed architect; (iv) a time schedule for the completion of the construction; and (v) a cash flow projection for the completion of all improvements, free and clear of all liens, encumbrances and claims other than a permitted mortgage. The Lessor shall approve or disapprove all of the same within fifteen (15) days after receipt thereof. The Lessor shall specify in reasonable detail items of which it does not approve and the Lessee shall promptly

revise and re-submit those items in accordance with all reasonable requirements of the Lessor. Upon approval, these items and applicable covenants and conditions of the lease shall constitute the "Master Development Plan", and shall be binding on the parties in the development of the properties, subject to modification by written agreement. Any submissions made to, and approved by the Lessor pursuant to the unrecorded option agreement between the Lessor and Lessee shall, if required herein, be deemed in compliance with this paragraph (b) and in any event shall constitute a part of the Master Development Plan of the demised premises.

(c) Completion of the Master Development Plan. The Lessee will carry out the Master Development Plan at its own expense, diligently and in an orderly and efficient manner according to the construction plans and specifications prepared by the Lessee and approved in writing by Lessor and those governmental authorities having jurisdiction..

(d) Payment of Development Costs and Expenses. The Lessee shall timely pay all costs and expenses, direct or indirect, arising out of or in connection with the demolition of existing improvements, and the construction and installation of the improvements and appurtenant improvements on the subject properties, including (without limiting the generality of the foregoing) all costs of surveying, mapping, engineering, drafting, grading, installing driveways, water lines, drainage structures, sanitary sewer and other utility facilities and structures, landscaping and fencing.

(e) Construction and Bond. Prior to commencing construction of new improvements, the Lessee shall:

- (1) Submit final working plans, specifications and schedules of the proposed new improvements, which have been prepared by an architect licensed in the State of Hawaii for the written approval of the Lessor, which approval Lessor will not unreasonably delay or withhold. The Lessee will reimburse the Lessor for the reasonable cost and expense incurred by the Lessor for the services of an architect

and an engineer (for ventilating and structural matters) to review the plans and specifications;

(2) Submit the construction contract entered into by the Lessee and the general contractor;

(3) Engage a licensed architect to supervise construction;

(4) Obtain all permits required by governmental agencies for demolition and construction;

(5) Cause a one hundred percent (100%) performance and payment bond, in a form and with a surety satisfactory to the Lessor, to be delivered by the general contractor engaged to perform the demolition and construction. The performance and payment bond shall name the Lessor and a recognized financial lending institution which has issued a written commitment to the Lessee for a construction loan to finance the cost of construction of the development as additional obligees. Such lender's commitment shall require that a performance and payment bond will be delivered to the lender before it will make any advances. The loan with such lender must actually close in accordance with its commitment. Such performance and payment bond must be acceptable to the lender, must be in the amount of the entire cost of construction of the project in accordance with plans and specifications approved by the Lessor as such cost of construction is stipulated in the construction contract between the Lessee and its general contractor, and must guarantee the full performance of the contract for the construction of the improvements in accordance with plans and specifications as approved by Lessor;

(6) Exhibit to Lessor a written commitment by a recognized lending institution authorized to do business in the State of Hawaii having a combined net worth of at least Ten Million Dollars (\$10,000,000.00), which commitment shall have been duly

accepted by the Lessee and by which the financing of the cost of construction of all improvements will be provided;

(7) Exhibit to Lessor a written "take-out" commitment, duly accepted by the Lessee, for the permanent financing of the new improvements by a recognized lending institution, by which commitment the permanent leasehold mortgage financing for the new building and/or the apartments comprising a condominium project with respect thereto will be provided;

The Lessee shall have the right to change or modify any mortgage commitment in accordance with the terms hereof or substitute another commitment for the same purpose;

(8) Deliver to the Lessor insurance policies or current certificates thereof evidencing: (a) insurance against loss from fire and other casualty as required by paragraph 11 of this lease; (b) public liability and property damage insurance as required by paragraph 12 of this lease; and (c) Workmen's Compensation insurance, to cover all persons employed in connection with construction.

(f) Disputes, Arbitration. If at any time during the term of this lease any dispute, difference or question shall arise concerning the interpretation, construction or effect of the terms and provisions of these development terms or concerning full compliance by the Lessee with the covenants herein contained or the rights or liabilities of the parties hereto. then every such dispute, difference or question shall at the written request of either the Lessor or the Lessee be submitted to and be determined by arbitration by three (3) impartial arbitrators appointed or selected in the same manner provided for the appointment of real estate appraisers and their decision shall be final, conclusive and binding upon the parties hereto; provided, however, that the arbitrators shall not be required to be qualified real estate appraisers unless the matter to be resolved requires an appraisal of the market value of the land or

improvements. Should any dispute with respect hereto be arbitrated which relates to development of the property, Lessee shall not proceed with development during the pendency of arbitration without (i) the prior consent of the Lessor, which consent shall not be unreasonably withheld, or (ii) by depositing a bond with the Lessor in a form and with sureties Satisfactory to the Lessor indemnifying Lessor against all losses, damages, or claims and demands resulting from alteration of the Lessor's right, power or interest or any further action hereunder by the Lessee.

(g) Force Majeure. In the event that the Lessee shall be delayed or hindered in or prevented from the performance of any act required by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations unrelated to zoning, subdivision or land use, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

The provisions of this paragraph shall not operate to excuse the Lessee from the prompt payment of rent or any other payments required by the terms of this lease.

(h) If Lessee shall fail to obtain and exhibit the documents referred to in (b) and (e) within a time above appointed, or shall fail to commence and complete construction as required by (a), (c) and (d), the Lessor shall have the right at any time within sixty (60) days thereafter to cancel and terminate this lease by written notice to the Lessee, in which event this lease shall terminate upon the tenth (10th) day after the date of service of such notice, unless within the ten-day period the Lessee shall satisfy whichever of the conditions in (b) and (e) as shall not have been theretofore satisfied or as to which the Lessee shall have successfully invoked arbitration pursuant to paragraph 8 (e) hereinabove, in which event the notice of cancellation shall become

void and of no further force or effect. The failure of Lessor to avail itself of the cancellation right herein provided for shall in no way diminish or affect Lessee's other undertakings in respect to the construction of new improvements as set forth herein or the remedies of the Lessor for the breach of such undertakings.

9. CHANGES AND ALTERATIONS. After Construction of the new improvements, the Lessee at Lessee's sole expense, shall have the right, from time to time, to make such changes and alterations, demolition or new construction, structural or otherwise, to the improvements on the demised premises as the Lessee shall deem necessary or desirable. Such changes, alterations, demolition or new construction (in this paragraph referred to as the "work" or collectively as "changes" and/or "alterations") shall be made in all cases subject to the following conditions which the Lessee covenants to observe and perform:

(a) Permits. No change or alteration shall be undertaken until Lessee shall have procured and paid for all permits and authorizations of the various governmental agencies or departments having jurisdiction. The Lessor shall, but without cost and expense to it, join in the application for such permits or authorizations whenever such action is necessary.

(b) Conditions Precedent. Any structural change or alteration shall be conducted under the supervision of an architect or engineer licensed in the State of Hawaii, selected by the Lessee, and if the estimated cost, as determined by such architect or engineer, of the work to be performed exceeds Ten Thousand Dollars (\$10,000.00), the Lessee shall comply with the requirements of paragraph 8 (e) as it would apply to such work.

(c) Value of Alterations and Changes. All changes and alterations shall be of such a kind that, when completed, the value and utility of the improvements on the demised premises shall be not less than the value and utility of the improvements immediately before any such change or alteration; except that in the case of a change or alteration

involving demolition and the construction of a new building, such new building will be of a value not less than the value of the building to be demolished.

(d) Completion of Work. All work done in connection with any change or alteration shall be done in a good and workmanlike manner in compliance with the applicable building and zoning laws and with all laws, ordinances, orders and requirements of all governmental agencies and authorities; the cost of such work or alteration shall be paid in cash or its equivalent, so that the fee of the demised premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied; the work shall be prosecuted with reasonable dispatch, unavoidable delays excepted. Workmen's Compensation insurance covering all persons employed in connection with the work shall have been procured before any work is begun, and general liability and property damage insurance for the mutual benefit of the Lessor and Lessee with limits of not less than those required to be carried pursuant to paragraph 12 shall be maintained by Lessee at his cost and expense at all times when any work is in progress; and if the estimated cost of such work is less than Ten Thousand Dollars (\$10,000.00). the Lessee shall provide satisfactory evidence of Lessee's financial ability to complete the construction free of all claims and liens of mechanics and materialmen.

10. LANDSCAPING. The Lessee will at all times during the term cause the premises to be landscaped in accordance with plans first approved in writing by the Lessor and will thereafter maintain such landscaping of the premises in a neat and attractive condition. The Lessee will not affix or place any signs, electrical or otherwise, or other exterior fixtures, nor post or suffer to be posted any bills or other advertising matter in front of or on the exterior of any buildings or other improvements erected on the property without the prior written consent of the Lessor.

11. FIRE INSURANCE. The Lessee will at all times during the term of this lease cause all improvements now or hereafter erected on the premises to be insured against loss or damage by fire with extended coverage, including demolition clause where applicable and government war risk insurance when reasonably available, in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost, without deduction for depreciation, in the joint names of the Lessor, the Lessee and any mortgagee as their respective interests may appear, payable in case of loss to such trust company qualified under the laws of Hawaii as shall be designated by the Lessee, as trustee, for custody and disposition as herein provided. The Lessee will pay or shall cause all premiums on such insurance and all fees and expenses in connection therewith to be paid when due and will from time to time deposit with Lessor true copies of such insurance policies or current certificates thereof, without prejudice to Lessee to insure the premises to Lessee's own benefit. In any case of loss, all proceeds of such insurance shall be immediately available to and used as soon as reasonably possible by the Lessee or such trustee for rebuilding, repairing or otherwise reinstating the same buildings in good and substantial manner according to the original plans and elevation thereof or such modified plan conforming to laws and ordinances then in affect as shall be first approved in writing by Lessor and all other parties in interest thereby directly affected and Lessee shall make up any deficiency in the insurance proceeds; provided, however, that in case said apartment buildings shall be substantially destroyed or damaged by any casualty during the last ten (10) years of the term hereof and the insurance proceeds are insufficient for restoration thereof, or in case, during the last ten (10) years of the term, restoration of said buildings to substantially their same size and function as immediately prior to such casualty shall be prevented by any laws or ordinances then in effect, then, in either such event, unless restoration according to said original or modified plans shall be undertaken diligently within one hundred twenty (120) days after such casualty, Lessee or such

trustee shall promptly remove all debris and remains of the damaged buildings and restore the demised land to good orderly condition and even grade, using the proceeds of insurance to the extent necessary therefor, and Lessee may thereupon surrender this lease free of any liens or encumbrances caused or permitted by Lessee and thereby be relieved of any further obligation hereunder subject to the payment to Lessor of all rent then accrued hereunder and taxes hereunder payable for the full current year and subject also to the prior surrender and termination of all subsisting subleases of any part of said premises and upon such surrender.

12. LIABILITY INSURANCE. The Lessee will, during the entire term, maintain with a responsible insurance company authorized to do business in Hawaii comprehensive general liability insurance with respect to the premises which shall be non-cancelable without Lessor's consent and name the Lessor as an additional assured with respect to the demised property and the sidewalks and sidewalk areas adjacent to them. The insurance shall have minimum limits of not less than \$300,000.00 for injury to one person and not less than \$1,000,000.00 for injury to more than one person in any one accident or occurrence and also insurance in a sum not less than \$100,000.00 for property damage, or such higher limits as the Lessor from time to time may establish as prudent for its protection under circumstances then existing. The Lessee shall promptly deposit current certificates of such insurance to the Lessor.

13. EXPENSES OF LESSOR. The Lessee will pay to Lessor on demand all costs and expenses, including reasonable attorney's fees, incurred by Lessor in enforcing any covenants or conditions contained in this lease, in remedying any breach by the Lessee, in collecting any delinquent rent, taxes or other charges hereunder payable by the Lessee, in recovering possession or in connection with any litigation (other than condemnation proceedings) commenced by or against the Lessee to which the Lessor shall without fault on its part to be made a party.

14. LIENS. Unless expressly provided herein, the Lessee has no power or authority to create any lien, encumbrance, or charge upon the premises or any improvements on them, or upon the estate or interest of the Lessor or Lessee. The Lessee will not commit or suffer any act or neglect by which the premises or any improvements or the estate of the Lessor or Lessee shall at any time during the term become subject to any attachment or any judgment, unauthorized lien, charge or encumbrance.

15. INDEMNITY. The Lessee will indemnify and hold the Lessor harmless from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the premises by the Lessee or any other person claiming by, through or under the Lessee, or any accident, fire, nuisance or unsafe condition made or suffered on the premises or adjacent sidewalks, and will reimburse Lessor for all its costs and expenses including reasonable attorney's fees incurred in the defense of any such claims. The Lessee will hold all goods, material fixtures, equipment, machinery and other property on the premises at his risk and hold the Lessor harmless from any loss or damage thereto from any cause.

16. RESTRICTION ON ASSIGNMENT AND SUBLETTING. The Lessee may not assign this lease or any interest therein, or sub-let the demised premises or any part thereof or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the demised premises or any portion thereof, without the prior written consent of Lessor; provided, however, that the Lessor may in its sole discretion withhold consent to any assignment or subletting other than a Sublease to Waikiki Banyan, Inc., a Hawaii corporation, until the development of and construction on the premises is completed; provided, further, that after the issuance of Condominium Conveyance Documents or Apartment Subleases, as contemplated by the provisions of paragraph 30 hereof, such Condominium Conveyance Documents or Apartment Subleases, as the case may be, or any interest therein may be assigned or sublet without the consent of the Lessor.

17. SURRENDER. At the end of said term or upon sooner determination of this lease, Lessee will peaceably deliver possession of the premises to Lessor, it being understood that the Lessee may remove and dispose of any and all buildings situated on the land demised hereby, but if said buildings shall not be removed and disposed of on or before such termination date, then Lessee agrees to deliver possession of the buildings to Lessor in good order, repair and condition within ten (10) days from such termination date, and to execute a deed therefor to Lessor covering Lessee's interest in the buildings.

IT IS MUTUALLY AGREED by and between Lessor and Lessee that:

18. APPRAISAL PROCEDURE. Whenever any value with respect to the property demised by this lease is to be determined by appraisal, the value shall be determined by an arbitration board consisting of three (3) impartial real estate appraisers. The Lessor and Lessee shall each promptly name one such appraiser and give written notification of the appointment to the other party. In case one party shall fail to make an appointment of the first appraiser, the party naming the first appraiser may apply to a judge of the Hawaii Circuit Court of the Judicial Circuit in which the premises are located for the appointment of a second appraiser. The two appraisers appointed in either manner shall appoint a third appraiser, and if they fail so to do within ten (10) days after appointment of the second appraiser, either party may have the third appraiser appointed by such judge, and the three appraisers so appointed shall proceed to determine the matter in question. The decision of a majority of the appraisers shall be final and binding upon both parties hereto. The provisions of this lease relating to appraisal shall be governed by the provisions of Chapter 685 of the Hawaii Revised Statutes as it may from time to time be amended. and the appraisers shall have all the powers and duties prescribed by the statute, and judgment may be entered upon any such award by the Circuit Court as provided in the statute. The costs of such of appraisal, exclusive of appraiser's fees, attorney's fees and

witness fee of persons engaged by a particular party, shall be borne equally by the Lessor and Lessee.

19. CONDEMNATION:

(a) In case at any time or times during the term hereof the demised land or any part thereof shall be taken or condemned in fee simple by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the demised land so taken or condemned shall at once cease and determine upon acquisition by such authority of title thereto or right of possession thereof, and Lessee shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for his leasehold interest in the demised land, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor, and all compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and be the sole property of the Lessee as the owner of the buildings and improvements, provided, however, that in case only part of said demised land shall be so taken or condemned, the aggregate rent thereafter payable hereunder for the remainder of said term shall be reduced in the proportion that the area of land so taken bears to the total area of land hereby demised;

(b) Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee in its own right on account of any and all damages to him during such period as the premises are rendered unfit for occupancy by reason of any condemnation and/or from or on account of any costs or loss to which Lessee might be put in altering said buildings or improvements as a result of such condemnation, or in removing his furniture, fixtures and equipment, so long as such action or the payment

of such damages shall not affect or diminish the compensation payable to Lessor upon condemnation as provided for herein.

(c) In the event of a condemnation of a leasehold interest in all or a portion of the demised land without the condemnation of the fee simple title also, such condemnation shall not excuse Lessee from full performance of all of his covenants hereunder, but Lessee in such event shall be entitled to present or pursue against the condemning authority his claim for and to receive all compensation or damages sustained by Lessee by reason of such condemnation, and Lessor's right to recover compensation or damages shall be limited to compensation for and damages, if any, to their reversionary interests, if any; it being understood, however, that during such time as Lessee shall be out of possession of the demised land by reason of such condemnation, this lease shall not be subject to forfeiture for failure to observe and perform those covenants not calling for the payment of money. In the event the condemning authority shall fail to keep the premises in the state of repair required hereunder, or to perform any other covenant not calling for the payment of money, Lessee shall have ninety (90) days, or such longer period as may be necessary in the exercise of due diligence, after the restoration of possession to him within which to carry out his obligations under such covenants. On request of Lessor, Lessee shall assign to Lessor such portion of this right to compensation as shall be necessary to pay the rent and other charges payable to Lessor by Lessee under the terms of this lease as the same become due, Lessee to make up any deficiency as the same become apparent.

20. DEFEASANCE. This demise is upon the express condition that if the Lessee shall:

(a) Fail to pay the rent reserved in whole or part or any of the costs or expenses enumerated in whole or part within ten (10) days after they become due, regardless of legal demand;

(b) Fail to observe or perform any other covenant or condition to be observed and performed by the Lessee and any such default shall continue for thirty (30) days after written notice to correct has been given to the Lessee;

(c) Become insolvent or shall make an assignment for the benefit of creditors, or shall file any proceedings as debtor or have taken against his any proceedings under any provision of the Federal Bankruptcy Act;

(d) Abandon the promises; or shall permit a materialman's or mechanics lien to attach to the premises and shall fail to have it released or discharged within five (5) days after entry of judgment or order of court for foreclosure or other enforcement of the lien; the Lessor may, in any such event, at once re-enter the demised premises, or any part in the name of the whole, and upon or without physical entry at its option terminate this lease by giving notice to the Lessee, and thereupon take possession of the demised premises and become wholly vested with all rights, title and interest of the Lessee and may expel and remove from the premises the Lessee or those claiming under Lessee and their effects, all without service of notice or resort to any legal process, and without being deemed guilty of any trespass or becoming liable for any loss or damage which may thereby be occasioned and without prejudice to any other remedy or right of action which the Lessor may have for collection of arrears of rent or for the same or any preceding or breach of covenant by the Lessee.

21. CONSENT TO MORTGAGE. Lessee may from time to time, without further consent of Lessor, assign this lease by way of mortgage to any bank, insurance company or other established lending institution as mortgagee, provided that the Lessee shall upon execution of such mortgage promptly provide a true copy of such mortgage to the Lessor. The Lessor shall send such mortgagee a copy of any notice sent by the Lessor to the Lessee pursuant to this Lease. Such authorized mortgagee or its assigns may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending

foreclosure of such mortgage or assignment in lieu of foreclosure may take possession of and rent the premises, and upon foreclosure or assignment in lieu of foreclosure may without further consent of Lessor sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants, duties and obligations of Lessee herein contained, and such assignee may make a purchase money mortgage of this lease to any established lending institution provided that upon execution of any such assignment or mortgage a true copy of it shall be delivered promptly to Lessor. No other assignment of this lease for which any provision hereof requires the written consent of Lessor shall be made without such consent. The mortgagee or its assigns of either such mortgage or any tenant of the mortgagee pending foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations herein imposed on the Lessee only during the period such person has possession or ownership of the leasehold estate. Nothing contained in such mortgage shall release or be deemed to relieve Lessee from the full and faithful performance and observance of his covenants herein contained or from any liability for the non-observance or non-performance thereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder, and the term, covenants and conditions of this lease shall control in case of any conflict with the provisions of such mortgage.

22. PROTECTION OF MORTGAGE. During the continuance in effect of any authorized mortgage of this lease, the Lessor will not terminate this lease or incur any expenses reimbursable by the Lessee except those reasonably necessary to protect its interest in the demised premises because of any default on the part of the Lessee to observe or perform any of the covenants or conditions herein contained if the mortgagee or its assigns, within one hundred twenty (120) days after Lessor has mailed to the mortgagee or its assigns at its last known address a written notice of intention to terminate the interest of the Lessee under this lease for such cause, shall cure such default, if the same can be cured by the

payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter perform all the covenants of this lease capable of performance by the mortgagee or its assigns until such time as this lease shall be sold upon foreclosure of such mortgage or assigned in lieu of such foreclosure. In case of such undertaking, Lessor will not so terminate within such further time as may be required by the mortgagee to complete foreclosure of such mortgage or other remedy thereunder, (including assignment in lieu of foreclosure), provided (i) that such remedy is pursued promptly and completed with due diligence, and (ii) that all rent and other charges accruing hereunder are paid as the same become due and upon foreclosure sale of this lease or assignment in lieu of foreclosure the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance by due diligence. Any default consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the premises junior in priority to such mortgage shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within the 120-day period and thereafter prosecuted in a diligent and timely manner. While any authorized mortgage of this lease is in effect, no amendment or surrender of all or any part of this lease shall be effective without the mortgagee's prior written consent. Ownership by or for the same person of different estates or interest in the demised premises shall not result in merger without the prior written consent of all persons having an interest in the demised premises.

23. HOLDING OVER. If the Lessee remains in possession of the premises after the expiration or other termination of this lease, he shall occupy them as tenant from month-to-month only, subject to all of the provisions of this lease, including rent, insofar as the same are applicable to a month-to-month tenancy; provided, however, that during any period which the Lessee may retain possession of the premises after receipt of notice of cancellation of this lease, the rental payable by the Lessee for each month (or fraction

thereof in excess of ten (10) days during such period) shall be one-twelfth (1/12th of the annual rent for the twelve (12) month period preceding cancellation.

24. SHOWING PREMISES. The Lessee will allow the Lessor during the last six (6) months of the term to affix to or keep on the premises "For Rent" notices and will allow the Lessor to show the premises at reasonable hours to prospective lessees, and the Lessor may at any time affix "For Rent" notices and show the premises at reasonable hours. to prospective purchasers.

25. NON-WAIVER. Acceptance of rent by the Lessor or its agent shall not be deemed to be a waiver of any breach by the Lessee of any covenant of this lease, nor of the Lessor's right to enter or declare and enforce a forfeiture for any breach of condition. The failure of the Lessor to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred or the waiver of a breach shall not be deemed a relinquishment for the future of any of such covenants, conditions or option.

26. NOTICES. Any notice required or permitted by law or this lease shall be in writing, and shall either be personally delivered or sent by registered mail to the Lessor or Lessee, as the case may be. Personal delivery shall be made by handing the notice to the other party. Registered mail shall be sent to the address of the other party hereinbefore stated or to any new address of which the sender has, in writing, been notified by the other party, such notice being deemed given when mailed. If "Lessor" or "Lessee" refers to more than one person or entity, notice to any one person shall be sufficient.

27. TIME IS OF THE ESSENCE. Time shall be of the essence of this agreement, and any failure of the Lessor and Lessee to perform or observe any of the terms, conditions or covenants contained herein, within the time specified herein, shall be considered a breach of a basic condition upon which this lease was predicated and shall entitle nondefaulting party to all rights and remedies provided for herein.

28. CONSOLIDATION. Each of the Lessors agrees that the Lessee may consolidate the parcels comprising the demised premises and does hereby authorize the Lessee to construct a building without regard to existing common boundaries. In the event a building is constructed upon the consolidated lands, the interest of the Lessor in said building shall be in the same ratio that the area of Lessor's land bears to the total area of the lands consolidated for such purposes; provided, however, that nothing contained in this paragraph shall be construed or be deemed to alter or modify any other provision of this lease. Each of the Lessors further agrees to join in any application or execute any further documents to effectuate the purposes hereinbefore mentioned, including, any such as may be required by any applicable statute, including the Horizontal Property Act (Chapter 514A, Hawaii Revised Statutes, as amended) ordinance, rule or regulation, or any governmental agency, or lending institution with whom Lessee shall enter into negotiations for construction and/or permanent financing for the development contemplated hereby, documents effecting the consolidation of the respective titles of the respective Lessors.

29. RESTORATION OF PARCEL BOUNDARIES UPON EXPIRATION OF LEASE TERM.

Upon the expiration of the term of this lease the Lessee upon written request of the Lessor shall, at Lessee's expense, by appropriate proceedings at such time required by law, to restore the boundary lines of the parcel as originally demised, removing, if necessary, all buildings and improvements which do not then conform with requirements for subdivided lots; provided that the within option shall not be exercisable by Lessor if Lessee shall have constructed new improvements upon the demised premises and any adjoining lands within which the demised premises is consolidated for use having an appraised value as of the date of completion of original construction of not less than \$10,000,000.00.

30. HORIZONTAL PROPERTY REGIME. Lessor consents to the construction by Lessee or its designee of an apartment building or buildings and other improvements on the premises hereby demised and to the establishment of a Horizontal Property Regime with

respect to said premises and improvements and further agrees, at Lessee's request, to join with the Lessee and/or its designee in submitting said premises and the interests of the Lessor and the Lessee to the provisions of the Hawaii Horizontal Property Act (Chapter 514A, Hawaii Revised Statutes, as amended) by executing and filing a Declaration of Horizontal Property Regime, thereby creating fee simple condominium estates in each of the apartments situate in the building or buildings to be constructed on the premises by the Lessee or its designee as herein provided. Such Declaration and the By-Laws of the Association of Apartment Owners thereunder shall be substantially in the forms theretofore agreed upon by the parties hereto, as evidenced by letter agreement executed concurrently herewith, subject to appropriate revision by mutual agreement of the parties hereto and such other and further amendments as may be required to comply with reasonable requirements of any lending institution and/or any agency such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, from whom Lessee obtains a commitment for construction and/or permanent financing for the project contemplated hereby, or to meet any requirements now or hereafter imposed upon Horizontal Property Regimes by law, the Real Estate Commission of the State of Hawaii, or any governmental agency of the Province of Alberta, Canada.

Upon the request of the Lessee at any time and from time to time hereafter, any provision herein to the contrary notwithstanding, Lessor will join with Lessee and/or its designee to lease and sublease apartments comprising the condominium project created by the Declaration as aforesaid, to qualified purchasers; or if the Lessee should so request to join with the Lessee and/or its designees in executing Condominium Conveyance Documents, thereby conveying fee simple interests in each of the apartments comprising the project, together with an undivided interest in the common elements of the buildings of the project and a lease and sublease of an undivided interest in the land demised

hereby. Such apartment leases or Condominium Conveyance Documents, as the case may be, shall be substantially in the form thereof heretofore agreed upon by and between the parties hereto pursuant to the letter agreement hereinbefore referred to, subject to appropriate revision by mutual agreement of the parties hereto and such further amendments as may be reasonably required by any lending institution and/or agency such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, from whom Lessee obtains a commitment for construction and/or permanent financing for the project contemplated hereby, or to comply with any requirements now or hereafter imposed upon Horizontal Property Regimes by law, the Real Estate Commission of the State of Hawaii, or any governmental agency of the Province of Alberta, Canada.

Lessor hereby agrees to execute each of said apartment leases or Condominium Conveyance Documents, as the case may be, upon presentment by Lessee and/or its designee, thereby ratifying, approving and confirming said apartment leases, or Condominium Conveyance Documents, as the case may be, and thereby undertaking and agreeing to and with Lessee and its designee that said apartment leases shall bind and demise all of the right, title, interest and estate of each of them in and to the premises and upon and in the event of a termination of the leasehold interest of the Lessee hereunder, each of said apartment leases and Condominium Conveyance Documents, as the case may be, shall remain and continue in full force and effect in accordance with and subject to the terms, conditions and covenants hereof.

31. PROTECTION OF SUBLEASES. In case at any time this lease shall be terminated for any reason whatsoever (except condemnation in accordance with the provisions hereof) prior to the expiration of the term hereby demised, then every sublease of all or any portion of the premises demised hereby 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 in such sublease, and every such holder shall upon receiving notice of such termination promptly attorn to the Lessor in place of the Lessee 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 this lease for the remaining term of such sublease or, if the rent herein reserved shall have been paid to the Lessee up to a date subsequent to the receipt of such notice, from such later date; (b) the term of such sublease shall not extend beyond the term hereby demised; and (c) in case of any conflict between the provisions of this lease and such sublease. the provisions of this lease shall, at the option of the Lessor, control.

32. DEFINITIONS. This lease shall be construed and interpreted in accordance with the following definitions and rules of construction:

(a) "Premises" or "demised premises" as used herein means all of the land described and enumerated in Exhibit "A", and all buildings and other improvements, and repairs, replacements and additions thereto, presently on or hereafter built or placed on the land, whether made, erected or constructed by the Lessor or Lessee, or both.

(b) "Lessor" shall mean and include persons identified as trustees in their fiduciary capacity and not in their personal capacity, and their successors in trust and assigns.

"Lessee" shall mean and include the person or persons named above, it or their executors, administrators, and permitted successors in interest or title, as the case may be.

(c) "Person" shall mean and include, as the context may require, individuals, corporations, partnerships, trusts or associations.

(d) Gender and Number. The use of any pronoun in reference to the Lessor or Lessee shall be construed to mean the singular or plural, the masculine or feminine or the neuter as the instrument and context may require.

(e) Obligations Joint and Several. When the terms "Lessor" or "Lessee" refer to more than one person, each such person shall be jointly and severally bound and liable with respect to all covenants, conditions and remedies to be observed and/or performed by the Lessor or the Lessee; provided, however, that the obligations of the Lessor shall be as the trustees aforesaid and not individually, and this lease shall be enforceable against and satisfied only out of the respective trust estates.

(f) "Costs", etc. The terms "advances", "costs" and "expenses" shall mean and include reasonable attorney's fees and court costs, title search and recording fees, whenever incurred.

33. FURTHER ASSURANCE. From time to time, on or before or after the commencement of the term of this lease, and without further consideration, the Lessor and Lessee shall execute and deliver such further instruments and take such legal action as may be reasonably requested by any other party to implement and effect the transactions contemplated hereby.

34. LESSOR'S CONSENT. In any case in which the Lessor's approval or consent is required hereunder, such consent or approval shall not be unreasonably or arbitrarily withheld, nor shall Lessor require the payment of any money for the giving of such consent other than a reasonable charge for the processing of the application for and preparation of the consent.

35. LATE CHARGE. In the event any payment provided for herein, including without limitation any payment of rent or real property taxes or assessments or excise and other taxes or rates or charges of every description to which the premises or any part thereof or improvements thereon, or the Lessor or Lessee in respect thereof may during the term be

assessed or become liable shall become overdue, the Lessor in addition to its other remedies and at its option may require and the Lessee agrees to pay a "late charge" of four cents (\$.04) for each dollar (\$1.00) so overdue. In the event any such delinquency continues for more than thirty-one (31) days, the same shall bear interest at the rate of one percent (1%) per month from the 32nd day of the delinquency to the date of payment. Lessee shall also be responsible for the payment of any penalty and interest to which the premises or any part thereof or improvements thereon, or the Lessor or Lessee in respect thereof may during the term be assessed or become liable as the result of Lessee's failure to make any of the foregoing required payments in a timely manner, and the Lessee shall reimburse the Lessor on demand in the event the Lessor pays the same.

36. SHORT FORM. The Lessor and Lessee agree that upon request of either party, they shall execute a memorandum agreement in recordable form referring to this lease, and containing a description of the property affected by this lease and the term of the lease, which memorandum may be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii.

37. HEADINGS. All headings used in this lease are for convenience only and are not to be construed as limiting in any manner the content of any paragraph or particular provision.

The Lessor agrees that In the event that and so long as the property is registered pursuant to Chapter 501, Hawaii Revised Statutes, as amended., it will deposit all Transfer Certificates of Title covering the demised promises or any part thereof in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

THE LESSOR AND THE LESSEE HEREBY ACKNOWLEDGE AND AGREE THAT THIS LEASE RESTATES AND SUPERSEDES IN ALL RESPECTS THAT CERTAIN INDENTURE OF LEASE, DATED AS OF DECEMBER 1, 1977, HERETOFORE EXECUTED BY THE PARTIES.

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

EXHIBIT "A"

All of that certain parcel of land (being a portion of Block F of Land Court Application 1865 (Pending) being also portions of Royal Patent 6098, Land Commission Award 1456, Apana 2 to Iwinui; Royal Patent 2822, Land Commission Award 2839, Apana 1 to Kahaka; and Royal Patent 5588, Land Commission Award 8452, Apana 3, Section 1 to A. Keohokalole), situated on the Northeast side of Kuhio Avenue, between Ohua and Paoakalani Avenues, at Hamohamo, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and more particularly described as per survey of Robert S. Torigoe, Registered Land Surveyor No. 1361, dated December 15, 1977. as follows:

Beginning at a pipe at the North corner of this parcel of land, being also the North Corner of Block F of Land Court Application 1865 (Pending), the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIKIKI" being 3,246.39 feet South and 2,786.85 feet East, thence running by azimuths measured clockwise from True South:

1. 312° 45' 230.00 feet along Lots 30-B, D-1 and 36-B of Land Court Application 615 to a pipe;

2. 42° 45' 420.02 feet along the Northwest side of Paoakalani Avenue to a pipe.

3. 44° 52' 16.65 feet along same;

4. Thence along the North corner of the intersection of Paoakalani and Kuhio Avenues, on a curve to the right with a radius of 20.00 feet, the azimuth and distance of the chord being $95^{\circ} 14' 30''$ 30.81 feet;

5. $145^{\circ} 37'$ 194.23 feet along the Northeast side of Kuhio Avenue to a pipe;

6. Thence along the East corner of the intersection of Kuhio and Ohua Avenues, on a curve to the right with a radius of 20.00 feet, the azimuth and distance of the chord being $184^{\circ} 11' 24.94$ feet to a pipe;

7. $222^{\circ} 45'$ 73.04 feet along the Southeast side of Ohua Avenue;