

Recordation requested by:

After recordation, return to:

Return by: Mail ( ) Pickup ( )

Memorandum of Tenancy at Will Agreement  
between  
ALEXANDER & BALDWIN, INC.  
(hereinafter referred to as "Landlord")  
and the Tenant hereinafter named

Tenancy at Will to: The Kihei Beach Joint Venture (hereinafter referred to as "Tenant"), a registered Hawaii Joint Venture, whose principal place of business and post office address is 700 Bishop Street, 16th Floor, Honolulu, Hawaii 96813.

Area, Location and General Description: The property (the "Property") demised hereby is the land shaded in red on the map attached hereto as Exhibit A, which Property is a portion of Second Division Tax Map Key Parcel 3-8-05-03.

The Property is to be used only for the following purpose:  
Landscaping to compliment the Kealia Condominium to be located on Tax Map Key 3-8-13-18 and for incidental pedestrian purposes for garden and park use associated therewith.

Rental: Ten and No/100 Dollars (\$10.00) per month.

The Tenant under this agreement does hereby further agree:

1. That the occupancy of the Property is subject to all the conditions hereinabove or hereinafter stated.

2. That the Tenant will pay all rentals and other sums payable hereunder at the office of the Landlord without notice or demand.

3. That the Tenant will vacate the Property immediately in case of a violation of the terms hereof, and otherwise within thirty (30) days of cancellation of this Lease or receipt of a notice to vacate the Property, and in case of violation or after the expiration of such period the Landlord may re-enter the Property and remove the Tenant (forcibly if necessary) and all of the Tenant's belongings therefrom without liability for damages of any kind whatsoever.

4. That the Landlord shall have the right to enter and inspect the Property at all times.

5. That the Tenant will observe and perform all laws, ordinances and regulations made by any governmental authority and applicable thereto, and will not make or suffer any strip or waste or unlawful, improper or offensive use of the Property.

6. That the Tenant will pay all real property taxes and assessments levied against the Property during the period for which this tenancy is in effect; provided that with respect to such payments it is understood and agreed that:

(a) All such payments shall be prorated between Landlord and Tenant effective as of the commencement and termination of this tenancy;

(b) In the case of assessments, the Tenant shall only be obligated to pay a monthly pro rata share of such assessment; and

(c) The Tenant shall only be obligated to pay the portion of such real property taxes or assessments properly and fairly allocable to the Property, it being realized that such taxes and assessments will normally be billed to the Landlord for the entire Tax Map Key Parcel 3-8-05-03 of which the Property is only a small portion.

7. That this agreement is not assignable in whole or in part and that no other rights shall be acquired other than those set forth by this agreement; provided that Tenant may, with the consent of Landlord, assign all of Tenant's rights, privileges and obligations hereunder to the Kealia Condominium Apartment Owners Association and in the event of such assignment the Association shall be fully substituted for the Tenant and the Tenant shall have no further duties or obligations hereunder.

It is understood that in the event of assignment, all provisions of this agreement will remain in full force and effect and Landlord may in its discretion establish further rules and regulations regarding the use of property leased hereunder.

8. Tenant shall be responsible for all planting, landscaping, installation, operation, maintenance and replacement of a sprinkler system for the Property. Subject to the approval of the State Board of Land and <sup>Natural Resources,</sup> the Landlord does hereby approve the landscaping plan shown on Exhibit A and does hereby authorize the Tenant to perform such landscaping on the Property. The Landlord does hereby further appoint the

Tenant as the Landlord's agent to seek approval from the State Board of Land and/<sup>Natural Resources,</sup> of the landscaping shown on Exhibit A as well as any subsequent landscaping which the Landlord may approve in the future. The Tenant will obtain the Landlord's prior approval of any subsequent landscaping plans for the Property. It is understood that the sprinkler system shall become the property of Landlord upon termination of this agreement.

9. That the Tenant will maintain and keep the Property in good order, appearance and repair at Tenant's expense and be responsible for the maintenance of the Property and will not make any changes or alterations within the Property without the consent of the Landlord as provided in Paragraph 8 above.

10. That the Tenant will indemnify and hold the Landlord harmless and defend the Landlord from and against all loss or damage and 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 Property by the Tenant or any other person claiming by, through or under the Tenant, or any accident, fire, nuisance or unsafe condition made or suffered on the Property or adjacent sidewalks, and will reimburse Landlord for all its costs and expenses including reasonable attorney's fees incurred in the defense of any such claims. The Tenant will hold all goods, materials, fixtures, equipment, machinery and other property on the Property at its risk and hold the Landlord harmless from any loss or damage thereto from any cause.

11. That the Tenant 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 Property and any sidewalk areas adjacent thereto which shall name the Landlord as an additional assured. The insurance shall have minimum limits of not less than Three Hundred Thousand and No/100 Dollars (\$300,000.00) for injury to one person and not less than One Million and No/100 Dollars (\$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 One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage. The Tenant shall promptly deposit current certificates of such insurance with the Landlord. Such policies or certificates shall require the insurer to give Landlord ten (10) days' written notice of its intent to cancel such policy.

In the event this agreement is to be assigned to the Kealia Condominium Apartment Owners' Association of insurance on the Property leased hereunder, Landlord may require prior to consenting to such assignment, certificates evidencing the insurance requirement as herein provided.

12. That unless expressly provided herein, the Tenant has no power or authority to create any lien, encumbrance, or charge upon the Property or any improvements on them, or upon the estate or interest of the Landlord. The Tenant will not commit or suffer any act or neglect by which the Property or any improvements or the estate of the Landlord shall at any time during the term become subject to any attachment or any judgment, unauthorized lien, charge or encumbrance.

13. Either the Landlord or the Tenant may record this document during the term of this agreement. This tenancy may be cancelled by either the Landlord or the Tenant giving written notice of such cancellation to the other. Any such

cancellation will be effective thirty (30) days after such notice is given to the other party.

IT IS FURTHER AGREED that at the end of this tenancy or sooner determination, Tenant will peaceably deliver up to Landlord possession of the Property including all plantings, trees, and spinkler systems within the Property and upon such surrender all of the Landlord's and Tenant's mutual obligations to each other hereunder shall be terminated.

DATED: DECEMBER 18, 1974.

ALEXANDER & BALDWIN, INC.

THE KIHEI BEACH VENTURE

By [Signature]  
Its President

By Amfac Financial Corp., a Hawaii corporation and a Venturer in The Kihei Beach Venture

By \_\_\_\_\_  
Its \_\_\_\_\_

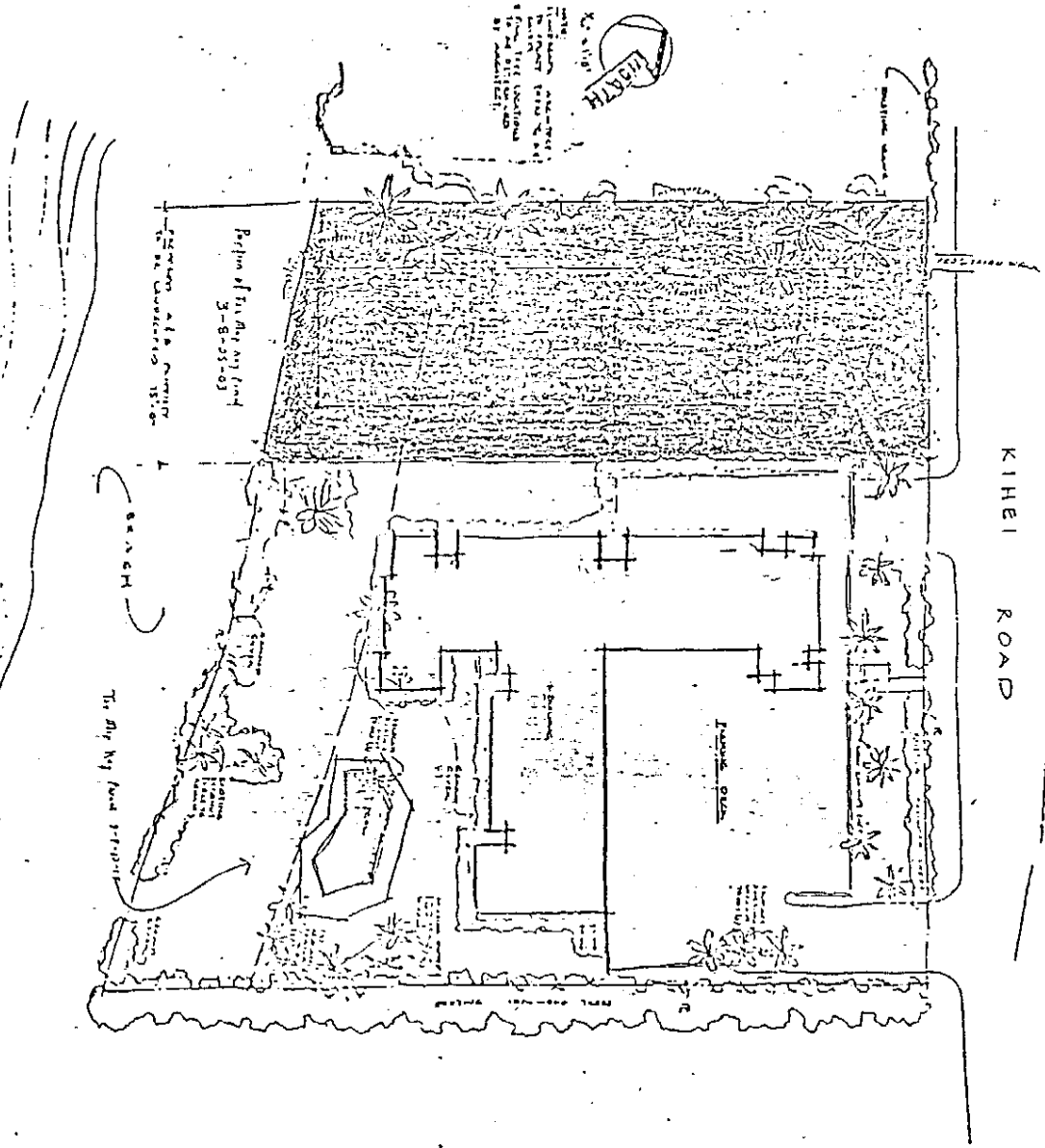
Landlord

By [Signature]  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Tenant

LANDSCAPE PLAN 693  
 KIHAEI BEACH JOINT VENTURE



Prepared by:  
 Date:  
 Location:  
 Project: