

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL () PICKUP ()

Revised in Hon 9988 page 93

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

THIS INDENTURE made this 15th day of May, 1974, by and between SAMUEL WOOLSEY LEE, husband of Lucy Silva Lee, of Wailuku, County of Maui, State of Hawaii, hereinafter called the "Lessor", and THE KIHEI BEACH JOINT VENTURE, a registered Hawaii Joint Venture, whose principal place of business is 700 Bishop Street, Honolulu, Hawaii, and whose post office address is P. O. Box 2448, Honolulu aforesaid, hereinafter called the "Lessee",

W I T N E S S E T H:

That Lessor, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of Lessee to be observed and performed does hereby lease to Lessee and Lessee does hereby accept and rent the property described in Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the same together with the rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto Lessee from the 15th day of May, 1974, for a term of sixty-two (62) years next ensuing, Lessee yielding and paying therefor unto Lessor in equal semi-annual payments each in advance on the first day of January and July in each and every year during the term hereof, provided that the first payment thereof shall be prorated to the next rental due date and paid upon

the execution hereof, net over and above all taxes, assessments and other charges hereunder payable by Lessee rent as follows:

(a) For the first two (2) years of the term of this Lease rent at FOURTEEN THOUSAND AND NO/100 DOLLARS (\$14,000.00) per annum.

(b) For the next ten (10) years of the term of this Lease TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$28,000.00) per annum.

(c) For the next ten (10) years of the term of this Lease THIRTY-THREE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$33,600.00) per annum.

(d) For the next ten (10) years of the term of this Lease FORTY THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$40,300.00) per annum.

(e) For each of the next three (3) ten (10) year periods of the term hereof, the rental is to be mutually agreed upon between the Lessor and Lessee not later than ninety (90) days prior to the commencement of each such period. In case of failure to agree prior to said ninety (90) day period, the rental is to be determined by appraisal as herein provided in Paragraph "A". The annual rental for each such period will be the higher of (1) seven percent (7%) of the then market value of the land excluding the improvements, at its highest and best use and as though not encumbered by the Declaration of Horizontal Property Regime, or (2) the then prevailing rate of return for the rental of similar property exclusive of improvements. In no event shall the rental for any succeeding period be less than the rental for the preceding ten (10) year period. P13

And Lessor hereby covenants with Lessee that he has good and marketable title to said premises in fee simple, free and clear of all encumbrances other than current taxes and except as set forth in Exhibit "A", and that upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants and conditions by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy the said premises for the term hereby demised without hindrance or interruption by any person except as herein expressly provided.

And Lessee hereby covenants with Lessor:

1. Rent. Lessee will pay said rent in lawful money of the United States of America at the times and in the manner aforesaid without deductions and without any notice or demand, at such place as the Lessor may direct.

2. Taxes and Assessments. Lessee will also pay directly to the taxing authority at least ten (10) days before the same become delinquent, all real property taxes and assessments of every description to which said premises or any part thereof or improvement thereon, or Lessor or Lessee in respect thereof, are now or may during said term be assessed or become liable, whether assessed to or payable by Lessor or Lessee; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments of principal together with interest on unpaid balances thereof as shall become due and payable during said term. Nothing herein contained shall prevent the Lessee from contesting in good faith by appropriate proceedings as may be allowed by law commenced before

the same become delinquent, the validity or amount of any such tax or assessment, nor require the payment thereof until the final decision of such contest adverse to the Lessee; provided, however, that such contest shall not be detrimental to the interest of Lessor, and that Lessee will pay upon the conclusion of such contest all such taxes and assessments together with all interest, penalties, fees and costs accrued thereon or imposed in connection therewith as required by law. Lessee shall pay to Lessor with each installment of rent or any other payments payable hereunder which are subject to the Hawaii General Excise Tax on gross income or any successor or similar tax the amount of all such taxes payable by Lessor on such payments; provided that this condition shall not obligate the Lessee to pay Lessor's federal or state net income taxes attributable to the rental or other payments made under this Lease.

3. Rates and Other Charges. Lessee will pay directly before the same become delinquent all utility charges, water and sewer rates, garbage rates and other charges and outgoings of every description to which said premises or any part thereof or improvement thereon, or Lessor or Lessee in respect thereof, may during said term be assessed or become liable, whether assessed to or payable by Lessor or Lessee.

4. Improvements Required by Law. Lessee will at its own expense during the whole of said term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or

in connection with or for the use of said premises or any part thereof.

5. Observance of Laws. Lessee will at all times during said term keep said premises in a strictly clean, orderly and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or this covenant.

6. Repair and Maintenance. Lessee will at its own expense from time to time and at all times during said term well and substantially repair, maintain, amend and keep all buildings and other improvements now or hereafter built or made on the demised land with all necessary reparations and amendments whatsoever in good order and condition, reasonable wear and tear and destruction by unavoidable casualty not herein required to be insured against excepted.

7. Inspection. Lessee will permit Lessor and Lessor's agents at all reasonable times during said term to enter said premises and examine the state of repair and condition thereof, and Lessee will repair and make good at its own expense all defects required by the provisions of this Lease to be repaired by Lessee, of which notice shall be given by Lessor or Lessor's agents, within thirty (30) days after the giving of such notice or such other reasonable time as may be specified therein.

8. Construction. Lessee will at its own expense within the first three (3) years of said term complete construction of new improvements on the demised premises, in accordance with complete plans, specifications and detailed plot plans therefor, prepared by a licensed architect and first approved in writing by the Lessor. The Lessee shall not dispose of or demolish the existing improvements prior to the execution of a contract for the construction of new improvements, and provided further that Lessee shall furnish Lessor a performance and payment bond as herein required. The time limit in the foregoing sentence shall be extended by a period equal to any delays caused by labor disputes, fire, unusual delay in transportation, construction material shortages, fuel shortages, unavoidable casualty or any other cause beyond Lessee's control. Lessee will not construct or place on said premises any other buildings or improvements, nor make or suffer any additions to or alterations of the basic structure of any buildings thereon, nor change the grading or drainage of said premises, except in accordance with complete plans, specifications and detailed plot plans therefor prepared by a licensed architect and first approved in writing by Lessor. When the Lessor's approval to plans is required by this paragraph, if such approval is not received within ten (10) days after it is requested it shall conclusively be deemed to have been given. It is specifically recognized that at the end of the lease term all improvements will be owned by Lessor.

9. Landscaping. Lessee will at its own expense promptly upon completion of the buildings required to be

constructed hereunder landscape the demised land in accordance with plans first approved by Lessor in writing (which shall be submitted along with the building plans to be submitted and approved as hereinbefore provided) and will at all times during the remainder of said term at like expense maintain such landscaping of said premises together with all adjacent land between any street boundary of said premises and the established curb line in a neat and attractive condition, and screen from view from any street, by means of fences, walls or other landscaping approved by Lessor in writing, all equipment, materials and supplies kept in open storage on said premises.

10. Bonds. Lessee shall, prior to the commencement of construction of any buildings or other development on the demised premises, deposit with Lessor a bond in the amount of one hundred percent (100%) of the contract price for such contemplated improvements, and with a surety or sureties satisfactory to Lessor, which bond shall guarantee to Lessor the full and faithful performance of the contract for such construction free and clear of all mechanics' and materialmen's liens.

11. Setback Lines. Lessee will observe any setback lines affecting said premises, and will not erect, place or maintain any building or structure whatsoever except approved fences, walls, or hedges between any street boundary of said premises and the setback line along such boundary without Lessor's prior written approval.

12. Fire Insurance. Lessee will at its own expense at all times during said term keep all buildings on the demised land insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement value thereof without deduction for depreciation in the names of Lessor, Lessee and any mortgagee as their interests may appear, payable in case of loss to such trust company qualified under the laws of Hawaii and having its principal office in Honolulu as Lessee shall designate as trustee for the custody and disposition as herein provided of all proceeds of such insurance and will pay all premiums on such insurance when due and all fees and expenses of such trustee in connection with its services, and will from time to time upon receipt thereof deposit promptly with Lessor true copies of such insurance policies or current certificates thereof. In every case of loss or damage to said buildings, all proceeds of such insurance (excluding any proceeds of any rental value or use and occupancy insurance of Lessee) shall be used with all reasonable speed by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plans and elevation thereof or such modified plan conforming to laws and regulations then in effect as shall be first approved in writing by Lessor and any mortgagee, and Lessee will make up from its own funds any deficiency in the insurance proceeds; provided, however, that if the main building on the demised land shall during the last ten (10) years of said term be destroyed or damaged

to an extent exceeding fifty percent (50%) of the actual cash value thereof immediately prior to such casualty, and the insurance proceeds are insufficient for restoring such building as herein provided, Lessee in lieu of such restoration may at its option within sixty (60) days after such casualty remove all debris and remains of damaged buildings and surrender to Lessor this Lease and all interest of Lessee and any mortgagee in the remaining insurance proceeds and thereby be relieved of any further obligations hereunder, provided, further; that the foregoing option of Lessee shall not be effective if Lessor, within thirty (30) days after the tender to him of such surrender and before his written acceptance thereof, shall elect to restore such building as herein provided, using the insurance proceeds and making up any deficiency from his own funds, and in every such case Lessee shall pay to Lessor as additional rent at the same times and in the same manner as the payment of rent hereinbefore reserved, from the date of completion of such restoration until the end of said term a sum equal to eight percent (8%) per annum of the amount so expended by Lessor from his own funds in making up such deficiency, the first payment of such additional rent to be prorated.

13. Liability Insurance. Lessee shall procure, at Lessee's own cost and expense, and keep in force during the entire period of this Lease, a policy or policies of comprehensive general liability insurance which shall include coverage for libel, slander and invasion of privacy in a company or companies approved by Lessor with minimum limits of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) against claims for property damage and not less than ONE MILLION

AND NO/100 DOLLARS (\$1,000,000.00) for injury to one or more persons in any one accident or occurrence, or for such higher values as may be dictated in the future by prudent business practice, and said policy or policies shall cover the entire demised premises and the sidewalks upon which the premises abut and name Lessor as an additional assured. Current certificates of such insurance shall be deposited with Lessor together with receipted premiums therefor.

14. Indemnity. Lessee will indemnify and hold 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 said premises by Lessee or any other person under Lessee, or any accident or fire on said premises or any nuisance made or suffered thereon, or any failure by Lessee to keep said premises or any adjacent sidewalks in a safe condition, or any claims by third parties due to the acts or omissions of the Lessee and will reimburse Lessor for all of Lessor's costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of Lessee and save Lessor harmless from any loss or damage thereto by any cause whatsoever.

15. Expenses of Lessor. Lessee will pay to Lessor on demand all costs and expenses including reasonable attorneys' fees incurred by Lessor in enforcing any of Lessee's covenants herein contained, in remedying any breach thereof,

in recovering possession of said premises or any part thereof, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party.

16. Liens. Lessee will not commit or suffer any act or neglect whereby said premises or any improvement thereon or the estate of Lessee therein shall at any time during said term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever (other than any authorized mortgages), which attachment, judgment, lien or charge is not removed within thirty (30) days of its imposition. If said should occur, Lessee will indemnify and hold Lessor harmless from all loss, cost and expense with respect thereto.

17. Waste and Unlawful Use. Except for the construction to be performed by Lessee hereunder, Lessee will not at any time make or suffer any strip or waste or unlawful, improper or offensive use of said premises.

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18. Surrender. At the end of said term or other sooner termination of this Lease as provided herein, Lessee will peaceably deliver up to Lessor possession of the land hereby demised, together with all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition except for reasonable wear and tear, casualty not required to be insured against, and as otherwise expressly provided herein; provided, however, that if not then in default hereunder Lessee may thereupon remove any trade fixtures installed on said premises

during said term but shall repair promptly to Lessor's satisfaction all damage caused by such removal.

PROVIDED, HOWEVER, and this demise is upon the express condition, that if Lessee shall fail to pay said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail faithfully to observe or perform any of the other covenants herein contained and on the part of Lessee to be observed and performed and such default shall continue for thirty (30) days after written notice thereof given to Lessee, or if Lessee then owning this Lease shall become bankrupt or abandon said premises, or if this Lease or any estate or interest of Lessee hereunder shall be sold under any attachment or execution, Lessor may in such case at once re-enter said premises or any part thereof in the name of the whole and upon or without such entry, at Lessor's option terminate this Lease without service of notice or legal process, and may expel and remove from said premises Lessee and all persons claiming under it and its effects without being deemed guilty of any trespass or becoming liable for any loss or damage occasioned thereby, and may bring an action for summary possession of said premises, all without prejudice to any other remedy or right of action which Lessor may have for arrears of rent or for any preceding or other breach of contract. If this Lease is recorded in the Bureau of Conveyances of the State of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be

made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction.

AND IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

A. Appraisal. Whenever this Lease provides that the market value of the demised land shall be determined by appraisal for computation of any rent hereunder, said market value shall be determined by three (3) impartial real estate appraisers, one (1) to be appointed by each of the parties hereto, and Lessor and Lessee each shall promptly name one (1) such appraiser and give written notice thereof to the other party, and in case either party shall fail so to do within ten (10) days after such notice of the appointment of the first appraiser, the party naming the first appraiser may apply to any person then sitting as judge of the Circuit Court of the Judicial Circuit in which said premises are located for appointment of the second appraiser, and the two (2) appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure 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 (3) appraisers so appointed shall proceed to determine the matter in question, and the decision of said appraisers or a majority of them shall be final, conclusive and binding on both parties hereto. Lessor and Lessee each shall pay one-half (1/2) of all proper costs and expenses of such appraisal other than their respective attorneys' and witness' fees.

B. Condemnation. In case at any time or times during said term said premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the premises so taken or condemned shall at once cease and determine, all compensation and damages payable 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 improvements on the demised land shall be divided between Lessor and Lessee as of the date when Lessee loses the right to possession thereof according to the ratios that the then expired and unexpired portions respectively of said term remaining after the original completion of such improvements bear to the sum of such portions; provided, however, that in case only part of said premises shall be so taken or condemned, the rent hereunder payable for the remaining period for which rent is fixed shall be reduced in the ratio that the land area of such part bears to the original land area hereby demised; and provided, further, that if the remaining land and improvements thereon shall thereby become unsuitable for the multi-family residential purposes of said property, Lessee may remove the remains of buildings and restore said land to good orderly condition and even grade, using the proceeds of condemnation of such improvements to the extent necessary therefor, and Lessee may thereupon surrender this Lease and thereby be relieved of any further obligations hereunder subject to the payment to Lessor of all rents accrued hereunder and taxes hereunder payable for the full current year

and subject also to the prior consent of any leasehold mortgagees and to the prior surrender and termination of all subsisting subleases of any part of said premises, and in the event of such surrender the remaining proceeds of condemnation of such improvements shall belong to Lessor. Condemnation of any leasehold interest in said premises or any part thereof shall not terminate this Lease nor excuse Lessee from full performance of its covenants for the payment of money or any other obligations hereunder capable of performance by Lessee, but in such case Lessee may claim and recover from the condemning authority all compensation and damages payable on account of its leasehold interest.

C. Assignment and Subleasing. Lessee shall not, except as provided in Paragraph E below, sublease or assign this Lease or any portion thereof without the written consent of Lessor; provided that the Lessee may without further consent or approval of the Lessor mortgage this Lease to any bank, insurance company or established lending institution and any mortgagee may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of such mortgage may take possession of and rent said premises, and upon foreclosure thereof may sell and assign the leasehold estate; provided, however, that every assignment of this Lease other than a mortgage shall contain the written undertaking of the assignee to perform all obligations of the Lessee hereunder, and that upon execution of any assignment or mortgage, a true copy thereof shall be delivered promptly to Lessor. Any person acquiring the leasehold estate in consideration of the extinguishment of the debt secured by such

mortgage or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on the Lessee by this Lease only during the period such person has possession or ownership of the leasehold estate.

D. Protection of Mortgage. During the continuance in effect of any mortgage of this Lease, Lessor will not terminate this Lease 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 the last known address thereof a written notice of intention to terminate 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 of the covenants of this Lease capable of performance by the mortgagee or its assigns until such time as the leasehold estate shall be sold upon foreclosure sale of such mortgage, and upon such foreclosure sale of this Lease the time for performance of any obligation of Lessee then in default hereunder other than the 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 leasehold estate junior in priority to such mortgage shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said one hundred twenty (120) day period and thereafter prosecuted in a diligent and timely manner.

E. Horizontal Property Regime.

(1) Creation of Horizontal Property Regime.

Lessor shall, at the Lessee's request and expense, as promptly as is practicable, join the Lessee in establishing on the premises a Horizontal Property Regime under the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes, as the same may be amended from time to time, and Lessor shall submit and subject the Lessor's fee simple interest in the premises thereto, and shall execute, acknowledge and authorize Lessee to record or file such documentation, including but not limited to, the Declaration of Horizontal Property Regime covering the property, and the By-Laws of the Association of Apartment Owners, as may be necessary or appropriate for the establishment of such Horizontal Property Regime. Such Declaration and the By-Laws of the Association of Apartment Owners thereunder shall be of the standard form of such documents for similar condominium projects, with such changes necessary or appropriate for said project as determined by mutual agreement of the parties, and shall be prepared by the Lessee, who shall reimburse Lessor for all costs and expenses including reasonable attorney's fees incurred by Lessor in reviewing such documentation. Such Declaration and By-Laws shall require said Association at all times to maintain a responsible corporate managing agent, experienced in the management of condominium projects for the management and operation of said project and for the collection and payment when due on behalf of the holders of Apartment Leases of all rent, taxes and other charges thereunder; such agent shall be appointed on an annual basis with such appointment being subject to approval by Lessor, which approval shall not be unreasonably withheld. The rentals and all other payments due under the Apartment

Leases and collected by said managing agent shall be paid to the Lessor by such agent when due and all costs for such collections and payments of rent by the managing agent shall be paid by the Association of Apartment Owners at no cost to the Lessor. In case of such submission, notwithstanding anything to the contrary hereinbefore contained in this Lease, all compensation and damages for or on account of any improvements of the project upon condemnation shall be payable to such bank or trust company authorized to do business in Hawaii as the Board of Directors of said Association shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and shall be used promptly by said Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor first approved as provided in the Declaration unless such restoration or replacement is impracticable in the circumstances; and all fire insurance required by the Declaration on buildings of said project shall be written in accordance with the Declaration in the name of the Board of Directors of said Association as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and payable in case of loss to such bank or trust company authorized to do business in Hawaii as said Board of Directors shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and such proceeds shall be used with all convenient speed by said Association for rebuilding, repairing or otherwise reinstating said buildings as hereinbefore provided. Except as otherwise expressly provided herein or in any apartment leases, Lessee shall at all times during said term be

deemed to be the owner of all apartments of said project for all purposes of the Declaration and By-Laws and shall have all the rights, privileges, duties and obligations of such owner including, without limitation, membership and vote in said Association; provided, however, that any vote or other action with respect to construction plans, partition of the project, or any other matter as to which this Lease or any apartment lease requires the approval or consent of Lessor, shall be effective only upon such approval or consent in writing. Lessee will be responsible for all costs in connection with said development and project including without limitation costs of preparing, recording and filing all documents as may be required, such documents to be in a form satisfactory to Lessor, and for all Hawaii conveyance taxes in respect to the apartment leases. Lessee will pay to Lessor on demand all costs and expenses including reasonable attorney's fees incurred by Lessor in connection with such Horizontal Property Regime and all documentation therefor.

X (2) Issuance of Apartment Leases. After the Horizontal Property Regime has been established, the Lessor, when requested to do so by the Lessee, will cancel this Lease and issue apartment leases (the "Apartment Leases") to purchasers of apartments, to the Lessee or to the Lessee's nominees; PROVIDED, HOWEVER, (1) all such Apartment Leases shall be for a term commencing on the day after cancellation of this Lease and ending on the expiration date of this Lease, (2) the aggregate net rental reserved under all Apartment Leases shall be equal to the total rental reserved under this Lease, and (3) each Apartment Lease shall contain the terms, provisions and conditions of the lease attached hereto as Exhibit B. The Lessee under each Apartment Lease shall

have the right to assign such lease without the consent of Lessor, provided that Lessor shall be given a copy of each such assignment. Lessor shall also agree to appoint a Hawaii corporation with offices in Honolulu, Hawaii, as Lessor's agent for purposes of giving consents and receiving notices required under any Apartment Lease; at Lessor's discretion Lessor may appoint the managing agent of the condominium who has been selected by the Association of Apartment Owners as Lessor's agent for the purposes of this sentence; it being further agreed that Lessor's costs, if any, for the services of such corporate agent shall be paid by the Lessee during the term of this Lease and when this Lease is cancelled and the Apartment Leases are issued such costs shall be paid by the Association of Apartment Owners. Every Apartment Lease shall be placed in a mutually satisfactory escrow at Lessee's expense with ~~instructions to withhold delivery~~ of each Apartment Lease until the escrow agent shall have received (1) the certificate of a responsible abstractor or title insurance company in Hawaii stating that, upon recordation of such Apartment Lease, the apartment unit and appurtenant common interest thereby demised are free and clear of all liens, encumbrances and assessments whatsoever other than those permitted by law and herein expressly set forth, and (2) the certificate of the sales agent for said premises stating that the Lessee under such Apartment Lease has acknowledged in writing to such agent his receipt of a copy of the final report and any supplementary report of the Hawaii Real Estate Commission pertaining thereto.

(3) Right of Mortgagees. Any mortgagee of any such Apartment Lease shall have the same rights and pro-

tection as are given to a mortgagee of this Lease, regardless of whether such mortgage is for the purpose of financing the payment of the purchase price thereof, the construction of new improvements, the restoration thereof, or alterations or repairs thereto, or otherwise, all without the consent of Lessor.

F. Nonwaiver. Acceptance of rent by Lessor or Lessor's agents shall not be deemed to be a waiver by Lessor of any breach by Lessee of any covenant herein contained or of Lessor's right to re-enter for breach of condition. Waiver by Lessor of any breach by Lessee shall not operate to extinguish the term, covenant or condition, the breach whereof has been waived, nor be deemed to be a waiver of Lessor's right to declare a forfeiture for any other breach thereof.

G. Joint and Several. Amfac Financial Corp. and Real Estate Consultants of Maui, Inc. as the Venturers in the Lessee shall each be jointly and severally liable for the performance of all of the Lessee's obligations hereunder, including the payment of all rentals due hereunder.

H. Notice. Any notice or demand provided for or permitted by this Lease shall be made in writing and mailed as registered or certified mail, addressed to such party at its post office address herein specified or the last known address of such party or person, or delivered personally within the City and County of Honolulu to any corporate officer or agent or other individual representing such party or person, and shall be deemed conclusively to have been given on the date of such mailing or personal delivery.

I. Waiver of Dower. Lucy Silva Lee, wife of Samuel Woolsey Lee, in consideration of the covenants and conditions contained herein with respect to all of her right, title and interest, whether by dower, community property or otherwise, which she may now or in the future acquire in and to the land described in Exhibit "A" does hereby join in and agree to the terms and conditions of this Lease. Without in any way limiting the generality of the foregoing, Lucy Silva Lee does hereby expressly join in and authorize the issuance of any Apartment Leases, subordination of the fee in the property to a Horizontal Property Regime, and/or the issuance and execution of any other documents by Lessor pursuant to the terms of this Lease all without her signature being required thereon or any further concurrence from her being required therein at the time of execution of the aforementioned documents.

J. General. No approval or consent of Lessor required by any provision hereof shall be capriciously or unreasonably withheld, and Lessor will not require the payment of any moneys therefor other than Lessor's reasonable expenses incurred in connection with such approval or consent. The term "premises" herein shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and other improvements now or at any time hereafter built on the land hereby demised. The term "Lessor" herein or any pronoun used in

place thereof shall mean and include the Lessor, Lessor's heirs, executors, administrators, and assigns, and the term "Lessee" herein or any pronoun used in place thereof shall mean and include the Lessee, its successors and assigns, according to the context hereof. The headings of paragraphs herein are inserted only for convenience and reference and shall in no way define or limit the scope of intent of any provision of this Lease.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

THE KIHAI BEACH JOINT VENTURE

By AMFAC FINANCIAL CORP., a
Hawaii corporation and a
venturer in The Kihei Beach
Joint Venture

Samuel Woolsey Lee
SAMUEL WOOLSEY LEE
Lessor

By [Signature]
Its Vice-President

By [Signature]
Its Asst. Vice President

Lucy Silva Lee
LUCY SILVA LEE

By REAL ESTATE CONSULTANTS OF
MAUI, INC., a Hawaii corpora-
tion, and a venturer in The
Kihei Beach Joint Venture

By [Signature]
Its President

Lessee

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 10th day of April, 1974,

before me personally appeared SAMUEL WOOLSEY LEE and LUCY SILVA LEE to me known to be the persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same as their free act and deed.

M. Marietta Yamaoka
Notary Public, Second Circuit,
State of Hawaii

My commission expires: 1-23-77

city

STATE OF HAWAII)
COUNTY OF Honolulu) SS.
~~MAUI~~

On this 20th day of May, 1974, before me personally appeared Joseph H. Keoloha, Jr., to me personally known, who being by me duly sworn, did say that he is the President of REAL ESTATE CONSULTANTS OF MAUI, INC. and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Joseph H. Keoloha, Jr. acknowledged said instrument to be the free act and deed of said corporation.

[Signature]
Notary Public, Second Circuit,
State of Hawaii Honolulu

My commission expires: AUG. 31, 1974

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

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) SS.
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On this 24th day of May, 1974, before
me personally appeared WALTER P. YIM and
TENEY K. TAKAHASHI, to me personally known,
who being by me duly sworn, did say that they are the
Vice-President and Asst. Vice President
of AMFAC FINANCIAL CORP. and that the seal affixed to the
foregoing instrument is the corporate seal of said corpora-
tion, and that said instrument was signed and sealed in
behalf of said corporation by authority of its Board of
Directors, and said WALTER P. YIM and
TENEY K. TAKAHASHI severally acknowledged said
instrument to be the free act and deed of said corporation.

[Signature]
Notary Public, First Circuit,
State of Hawaii

My commission expires: AUG. 31, 1974