Lease

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DOC NO 508847

LAND COURT

OFFICE OF
ASSISTANT REGISTRAR
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3 O'CLOCK 59 M. P M

NOTED ON CERTIFICATE No 43296

IN REGISTRATION BOOK PAGE

ASSISTANT REGISTRAR

TRANSFER OF CERTIFICATE HAS BEEN ISSUED
AND ENTERED

REGISTRATION BOOK PAGE

BEING CERTIFICATE NO. IN

OFFICE OF THE ASSISTANT REGISTRAR
LAND COURT

RECORDATION REQUESTED BY:
SECURITY TITLE CORPORATION
P. O. Box 1878
Honolulu, Hawaii 96805
AFTER RECORDATION, RETURN TO:

SECURITY TITLE CORPORATION
P. O. Box 1878
Honolulu, Hawaii 96805
RETURN BY: MAIL ( ) PICKUP ( )

70- 40169

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED FOR RECORD

LIBER 7137 PAGE 91

1970 AUG 13 PM 3:59

INDEXED REGISTRAR

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APARTMENT LEASE

THIS INDENTURE made this 11th day of June, 19 70, by and between KDI INVESTMENTS, INC., a Hawaii corporation, herein called "Lessor", and Norman Louis Fellers and Virginia Ruby Fellers, husband and wife,

herein called the "Lessee", whose residence and post office address is 6134 So. Fowler Avenue, Fowler, California

WITNESSETH:

1. **Demised Premises.** Lessor, in consideration of the rents reserved herein and of the covenants contained herein and to be observed and performed by Lessee, demises and leases to Lessee, as Tenants by the Entirety

and Lessee accepts and rents from Lessor;

All those certain premises, called herein the "demised premises", comprising a portion of the "Wailana at Waikiki", a horizontal property regime, called herein the "Project", which Project consists of all those certain parcels of land the building and other improvements thereon located at 1860 Ala Moana Blvd., said Honolulu, and was established by that certain Declaration of Horizontal Property Regime dated July 23, 1968, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 449930, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 6150, Page 245, which land is described in Exhibit A attached hereto and incorporated by reference for every purpose and which demised premises are described as follows:

FIRST: Apartment No. 804-A on the 8th floor of the project as shown on the plans therefor filed in said office of the Assistant Registrar of Land Court as Condominium Map No. 58.

TOGETHER WITH appurtenant easements as follows:

(a) An exclusive easement to use Parking Stall(s) 804 ;

(b) Non-exclusive easements in the common elements designed for such purposes, for ingress to, egress from, utility services for, and support, maintenance, and repair of said Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Declaration; and in all other Condominium Units and common elements of the Project for support;

SUBJECT TO easements for the encroachment by any common element or part thereof now or hereafter existing thereon and for entry as may be necessary for operation of the Project or for making repairs therein as provided in the Declaration; and subject also to easements for support of the other units and common elements.

SECOND: An undivided .4300 % interest in all common elements of the Project as established for said Apartment by the Declaration, or such other fractional or percentage interest established for said Apartment by any amendment to the Declaration as tenant in common with the other owners of the Project subject to all exclusive and non-exclusive easements appurtenant to the other units of the Project and reserving and subject to all easements required for drainage, sewers, and utilities serving the Project.

RESERVING TO Lessor within the common elements the right to grant to any public utility or governmental authority rights of way and other easements over, across and under the common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities, and rights to enter for purposes of installing, repairing, altering, and removing such lines and facilities and of trimming any trees in the way thereof.

STATE OF HAWAII CONVEYANCE TAX 2.10

2. **Demised Term.** The term of this Apartment Lease, herein called the "demised term", shall begin on AUG 1 1970 and shall end on November 30, 2039.

3. **Rent.** Lessee shall pay to Lessor in legal tender of the United States of America, without deduction, notice, or demand, net of all real property taxes, assessments, and other charges payable by Lessee with respect to the demised premises, and in equal quarterly installments in advance on the first day of January, April, July, and October of every year during the demised term, except that the first payment, if attributable to a period of less than three months, shall be reduced proportionately, the following rents:

(a) $ 316.56 per year until November 30, 1982 ;

(b) $ 414.96 per year until November 30, 1999 ;

(c) For and during each of the next four successive ten-year periods of the demised term, such annual rent as will equal Lessee's proportionate share, as determined under Paragraph 2 of the Declaration, of the then fair rental value for the property, exclusive of improvements, at its highest and best use (the highest and best use shall be deemed to be the design and size of improvements constructed on the demised premises at the commencement of this lease), as determined for each such period not less than 90 days before the commencement thereof by written agreement of Lessor and the Association of Owners of Wailana at Waikiki, herein called the "Association", acting by its Board

of Directors which Lessee appoints hereby as his sole agent for such determination of fair rental value, or, if no such written agreement is so reached, as determined by appraisal as provided in Paragraph 29 hereof; provided, however, that in no event shall such annual rent for any such period be less than the annual rent payable by Lessee during the next preceding period.

4. **Quiet Enjoyment.** Upon payment by Lessee of said rent and upon observance and performance of the covenants, conditions, and agreements contained herein and to be observed and performed by Lessee, Lessee peaceably shall hold and enjoy the demised premises for the demised term without hindrance or interruption by Lessor or anyone lawfully claiming by, through or under it except as provided expressly herein.

5. **Taxes and Assessments.** Lessee shall pay, as they become due and payable, all real property taxes and assessments of every description to which the demised premises or any part thereof or any improvement thereon, or Lessor or Lessee with respect thereto, are now or during the demised term may be assessed or become liable, whether assessed to or payable by Lessor or Lessee; provided, however, that such taxes and assessments shall be prorated as of the dates that demised term begins and ends; and provided, further, 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 and interest as may become due and payable during the demised term. If at any time during the term of this lease there is imposed upon Lessor any real property taxes which any statute or ordinance specifically prohibits being paid by Lessee, then the rent provided for in paragraph 3 herein shall be increased by the amount of said real property taxes.

6. **Common Expenses, Condominium Unit Expenses, Rates, and Other Charges.** Lessee shall pay, as they become due and payable, all assessments for his proportionate share of the common expenses and condominium expenses of the Project and all rates and other charges of every description to which the demised premises or any part thereof or any improvement thereon, or Lessor or Lessee with respect thereto, may be assessed or become liable during the demised term, whether made by governmental authority, by any public or community service company, or by the Association pursuant to the Declaration, and whether assessed to or payable by Lessor or Lessee. No failure by Lessee to pay any assessment for his proportionate share of the common expenses shall constitute a default for which this Apartment Lease may be terminated under paragraph 24 hereof if the Association diligently commences and consummates foreclosure of any lien it may have under the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes.

7. **Improvements Required by Law.** Lessee, at all times during the demised term, at his proportionate share of the expense, and by the Association, shall 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, or repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

8. **Observance of Laws.** Lessee at all times during the demised term, shall keep the demised premises, and at his proportionate share of the expense, and by the Association, all common elements of the Project, in a strictly clean and sanitary condition; shall observe and perform all laws, ordinances, rules, and regulations now or hereafter made by any governmental authority and all By-Laws, rules, regulations, agreements, decisions, and determinations duly made by the Association which may be applicable to the Project or the use thereof; shall observe and perform all restrictions, covenants, conditions, and provisions of the Declaration and duly made amendments thereto affecting the Project; and shall indemnify Lessor against all actions, suits, damages, and claims by whomever brought or made by reason of the non-observance or non-performance hereof or of this paragraph by Lessee or any person under him.

9. **Repair and Maintenance.** Except as provided in paragraph 10 hereof, Lessee, at all times during the demised term, shall well and substantially repair, maintain, amend, and keep the demised premises, and at his proportionate share of the expense and by the Association, all common elements of the Project, together with all necessary additions and alterations thereto, in good order and condition; and at his proportionate share of the expense and by the Association, shall maintain all landscaping of the Project and all adjacent land between any street boundary of the Project and the established curb line in a neat and attractive condition, and all trees, shrubs, and grass thereon in good cultivation, replanting as may be necessary. Lessor shall assign to Lessee any and all rights of recovery against the developer or developer's contractors due to faulty materials or workmanship.

10. **Uninsured Casualty.** In the event that at any time during the term of this lease the improvements of the project shall be damaged or destroyed by any casualty not herein required to be insured against and the Association shall remove all remains of such improvements and restore said land to even grade and cause all subsisting apartment leases to be surrendered, Lessee, if his mortgagee shall join therein, may surrender this lease and thereby be relieved of any further obligations, subject to payment to Lessor of all rent, taxes and assessments payable for the current year.

11. **Inspection.** Lessee shall permit Lessor and its agents at all reasonable times during the demised term to enter the demised premises and the Project and examine the state of repair and condition thereof, and shall repair and make good at his own expense all defects in the demised premises and at his proportionate share of the expense and by the Association, shall repair and make good all defects in the common elements of the Project required herein to be repaired, and of which notice is given by Lessor or its agents, within fifteen (15) days after the giving of such notice.

12. **Apartment Use.** The demised premises shall be used for residential and hotel purposes only and shall not be used for or in connection with the carrying on of any business or trade or in any manner not permitted by the Declaration or by the By-Laws of the Association.

13. **Construction of Improvements.** Lessee shall not individually or by the Association erect or place anywhere within the Project any building or structure, including fences and walls, nor make any additions or structural alterations to or exterior changes of any common element of the Project, nor place or maintain any bill or sign thereon, except in accordance with plans and specifications therefor, including a detailed plot plan, first approved in writing by Lessor.

14. **Bond.** Lessee shall not individually or by the Association commence construction of any improvement to the demised premises or the Project without first obtaining and depositing with Lessor a bond naming Lessor as obligee with a corporate surety authorized to do business in the State of Hawaii, which bond shall guarantee completion of such construction in accordance with the contract therefor free and clear of all mechanics' and materialmen's liens and shall be in a penal sum not less than the cost of such construction.

15. **Waste and Unlawful Use.** Lessee shall not individually or by the Association make or suffer any strip or waste or any unlawful, improper or offensive use of the demised premises or the Project.

16. **Fire Insurance.** The Lessee will during the term of this lease cause the Association to keep any and all buildings and other improvements now on or hereafter erected on the lands above described insured against loss or damage by fire, malicious mischief and vandalism, and extended coverage risks, and during time of war, to the extent the same is reasonably obtainable, against war risks, in the name of the Board of Directors of the Association, as trustee for Lessor and Lessees, and, any mortgagees of Lessees' interests, as their interests shall appear, in an insurance company or companies authorized to do business in the State of Hawaii, in an amount as nearly as possible equal to the replacement value thereof, all in accordance with the requirements of the Declaration. The proceeds of such insurance shall be paid to an insurance trustee and Lessee shall pay his proportionate share of any charges of such insurance trustee. If the apartment building is damaged by fire of other casualty which is insured against and said damage is limited to a single apartment, the insurance proceeds shall be paid to the owner of such apartment, and the mortgagee or mortgagees of the owner of such apartment, as their respective interests may appear, and such owner or mortgagee or mortgagees shall use the same to and shall forthwith rebuild or repair such apartment. If such damage shall extend to two or more apartments or extends to any part of the common elements, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of Lessee) shall be retained by the designated trust company for the benefit of the Association of Apartment Owners, and Lessee shall cause the Association of Apartment Owners to use the proceeds with all reasonable speed for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan 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 all other parties in interest thereby directly affected, and Lessee will make up from his own funds his pro rata share of any deficiency in the insurance proceeds. Such rebuilding, repairing or reinstating shall be made under the supervision of a licensed architect or engineer previously approved by the Lessor and disbursements from such proceeds shall be made to the contractor for such work only as the work progresses and upon appropriate certification by such architect or engineer subject to such reasonable safeguards as may be imposed by any mortgagee or the surety company on such bond. In the event the insurance proceeds are insufficient to pay the cost of repairing or reconstructing any damage occasioned by an

insured hazard, the Lessee shall pay his proportionate share of any special assessment levied by the Association to pay the cost, in excess of the insurance proceeds, of repairing or rebuilding; provided, however, that if the restoration of the building in accordance with the original plans and specifications or with such modified plans as shall be agreed upon by the Lessor and the Association shall not be permissible under the laws and regulations then existing, or if the buildings and improvements on said premises shall be damaged at any time during the last ten (10) years of the term, and the insurance proceeds shall be insufficient to restore the building, then if all other lessees and sublessees and their mortgagees shall do likewise, Lessee, by tender of a written instrument in a form suitable for recording and consented to by Lessee's mortgagee, if any, within sixty (60) days after such casualty, may surrender this lease effective as of the date of such casualty; and in the event that the Lessees exercise their options to surrender, the insurance proceeds shall be first used to remove any remaining improvements and the balance, if any, shall be paid to the Lessor, the Lessees and the mortgagees, if any, of the interests of the Lessees, as their interests shall appear, Lessee being entitled to take the proportion of such insurance proceeds, which the unexpired term of the lease at the time of such casualty bears to the entire term of the lease, and the Lessor being entitled to the balance of such proceeds. And the Lessee shall be released and relieved of all obligations to rebuild and also from further obligations under the terms of this lease, and the Lessor shall refund any prepaid but unearned rent. Any such surrender shall be accompanied by payment of any accrued but unpaid rent and real property taxes for the year of surrender. That portion of the proceeds payable to the Apartment Lessees (and their mortgagees) shall be divided between the Apartment Lessees in the same ratio as the rental payable by each Lessee bears to the total rental for all Apartments.

17. **Liability Insurance.** Lessee, at all times during the demised term, at his proportionate share of the expense, and by the Association, shall effect and maintain with respect to the Project comprehensive general liability insurance covering the Association, all the condominium units, and the Managing Agent and other employees of the Association, and naming Lessor as additional insured, in an insurance company authorized to do business in the State of Hawaii with minimum limits of not less than $500,000 for injury to one person and $1,000,000 for injury to more than one person in any one accident or occurrence and also insurance in a sum not less than $50,000 against claims for property damage, in the manner provided in the Declaration.

18. **Indemnity.** Lessee shall indemnify and hold Lessor harmless against all claims and demands for loss or damage, other than loss or damage as may be caused by the negligence or misconduct of Lessor or its agents, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the demised premises or the project by Lessee or any person claiming by, through or under him, or any accident or fire in the demised premises or any nuisance made or suffered therein, or any failure by Les[illegible]or the Association to keep the demised premises and the Project or any sidewalk abutting it in a safe condition and shall reimburse Les[illegible] all costs and expenses, including reasonable attorney's fees, incurred by it in defending against any such claim or demand. Lessee s[illegible]hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatever of Lessee within the demised pre[illegible]ses or the Project at the sole risk of Lessee and shall hold Lessor harmless against any claims for loss or damage thereto by any cause whatsoever, other than the negligence or misconduct [illegible]essor or its agents.

19. **Lessor's Costs and Expenses.** Lessee shall pay to Lessor on [illegible] all costs and expenses, including reasonable attorneys' fees, incurred by it in enforcing any covenant of Lessee contained herein[illegible]emedying any breach thereof, in recovering posession of the demised premises or any [illegible]reof, in c[illegible]ecting any delinquent rent, taxes, assessments, or other charges payable by Lessee, or in connection with any litigati[illegible]r than condemnation proceedings, commenced by or against Lessee to which Lessor without any fault on its part is made a party.

20. **Liens.** Lessee shall not individually or by the Association commit or suffer any act or neglect whereby the demised premises or the estate of Lessee therein or the Project or any part thereof at any time during the demised term becomes subject to any attachment, judgment, lien, charge, or encumbrance whatsoever, other than any authorized mortgage, and shall indemnify and hold Lessor harmless against all losses, costs, and expenses including reasonable attorneys' fees, incurred by it in connection therewith.

21. **Managing Agent.** Lessee, at all times during the demised term, at his proportionate share of the expense, and by the Association, shall employ and maintain a responsible trust company or other corporation incorporated under the laws of the State of Hawaii as Managing Agent of the Project for the direct management and operation thereof and maintenance, repair, rebuilding, and restoration of the common elements. Such managing agent shall be responsible for the collection, custody, and payment to Lessor of all rent, taxes, assessments and other charges payable to Lessor by Lessee; provided, however, that notwithstanding such agency Lessee at all times shall remain liable directly to Lessor for the performance of all obligations of Lessee contained herein. Such Managing Agent shall advise Lessor, the Board of Directors of the Association, and any mortgagee of record of Lessee's interest in the demised premises of any delinquency by Lessee in the payment of real property taxes and assessments or of his proportionate share of the common expenses.

22. **Surrender.** Upon expiration of the demised term or upon sooner termination of this Apartment Lease, Lessee peaceably shall deliver to Lessor possession of the demised premises, together with all improvements thereon or belonging thereto, by whomsoever made, in good order and condition except for reasonable wear and tear and as otherwise provided expressly herein; provided, however, that Lessee, if not then in default hereunder, by the Association may remove any trade fixtures installed in the demised premises during the demised term but shall repair promptly to the satisfaction of Lessor all damage caused by such removal.

23. **Holdover.** In the event Lessee remains in possession of the demised premises after expiration of the demised term without the execution of a new lease and in such manner as to create a valid holdover tenancy, Lessee shall be deemed to occupy the demised premises as a tenant from month to month subject to all the terms and conditions hereof as are applicable to a month-to-month tenancy.

24. **Defeasance.** This Apartment Lease is upon the express and continuing condition that (a) if Lessee fails to pay said rent or any part thereof within 15 days after it has become due, whether or not it has been legally demanded, or (b) if Lessee fails to observe or perform faithfully any covenant or agreement contained herein and to be observed and performed by Lessee and such default continues for thirty (30) days after written notice thereof is given to Lessee, or (c) if Lessee then owing this Apartment Lease becomes bankrupt or makes any assignment for the benefit of his creditors or abandons the demised premises, or (d) if this Apartment Lease or any estate or interest of Lessee therein is sold under any attachment or execution, Lessor in any such case, but subject to the provisions of paragraphs 6 and 28 hereof, at once may re-enter the demised premises or any part thereof in the name of the whole and, with or without such entry, at the option of Lessor terminate this Apartment Lease, without service of notice of legal process, may expel and remove from the demised premises Lessee and all persons claiming by, through, or under him and their 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 the demised premises, all without prejudice to any other remedy or right of action which Lessor may have for arrears of rent or for any earlier breach of contract; provided, however, that no failure of the Association to observe or perform any covenant of Lessee provided herein to be observed and performed by the Association shall constitute a default by Lessee hereunder so long as Lessee uses his best efforts to cause such covenant to be observed and performed by the Association and pays his proportionate share of all expenses with respect thereto within fifteen (15) days after such proportionate share has become due and payable by Lessee.

25. **Condemnation.** If at any time during the demised term the demised premises or the Project or any part thereof shall be condemned under the power of eminent domain, the Lessee shall surrender to the Lessor his leasehold interest in all the premises so taken or condemned, and except as hereinafter provided, Lessee shall not be entitled by reason thereof to any claim against Lessor for compensation or damages for loss of his leasehold interest; provided, however, that the rent otherwise payable to Lessor hereunder shall be reduced upon any such condemnation in the same proportion that the area of any land of the Project so taken or condemned bears to the area of the land of the Project immediately preceding the occurrence thereof. All compensation and damage for or on account of any land shall be payable to and be the sole property of the Lessor. All compensation and damages for or on account of any building or other improvements of the Project so taken or condemned shall be payable to such bank or trust company authorized to do business in the State of Hawaii as the Association shall designate as trustee for all condominium unit owners and mortgagees of record affected thereby according to their respective interests so taken or condemned, and shall be used as soon as practicable by Lessee and the Association for repairing, rebuilding, and restoring the demised premises and the Project on the remaining land in accordance with modified plans and specifications therefor first approved in writing by Lessor, and Lessee, at his proportionate share of the expense and by the Association, shall make up any deficiency in such compensation and damages, all in the manner provided in the Declaration. In any event, (a) if only part of the Project is so taken or condemned, thereby rendering the remaining land and the building and other improvements thereon unsuitable for the purposes of the Project, and the Association removes all remains of the building and other improvements and restores the remaining land to good order and condition and even grade and causes all other subsisting leases of the

Project to be surrendered to Lessor, or (b) if all or any part of the demised premises is so taken or condemned, thereby rendering any remaining part thereof unsuitable for residential or commercial purposes, and the Association removes all remains of the demised premises and restores the remaining common elements of the Project to good order and condition and by a duly executed amended declaration causes the remaining part of the Project to be reconstituted as a new horizontal property regime without the demised premises, Lessee in either case may surrender this Apartment Lease and thereby be relieved of any further obligations to Lessor, subject to the payment to Lessor of all rent prorated to the date of such surrender and all taxes, assessments, and other charges payable hereunder for the full calendar year of such surrender. Any compensation and damages which shall represent the value of the buildings erected upon the demised premises shall be apportioned between Lessor and Lessee, Lessee being entitled to take the proportion of such award together with interest thereon, if any, which the unexpired term of the lease at the time of condemnation bears to the remaining life of said new building or buildings at the time of condemnation, and Lessor being entitled to the balance of such award. Condemnation of any leasehold interest in the Project shall not terminate this Apartment Lease nor excuse Lessee from full performance of the covenants of Lessee contained herein and capable of performance by him, but in such case Lessee may claim and recover from the condemning authority all compensation and damages payable for loss of his leasehold interest. In the event that only the fee simple interest is condemned, subject to this lease, under the power of eminent domain, all proceeds of condemnation shall belong to Lessor.

26. **Consent to Assignment and Subletting.** Lessee from time to time without further consent of Lessor may assign this Apartment Lease or sublet the demised premises; provided, however, that every assignment of this Apartment Lease other than a mortgage shall contain the written undertaking of the assignee to perform all obligations of Lessee contained herein, and that upon execution of any such assignment a true copy thereof shall be delivered promptly to Lessor.

27. **Consent to Mortgage.** Lessee from time to time without further consent of Lessor may mortgage this Apartment Lease to any bank, insurance company, or other established lending institution, as mortgagee; provided, however, that upon execution of any such mortgage a true copy thereof shall be delivered promptly to Lessor. The mortgagee may enforce such mortgage and acquire title to the leasehold estate of Lessee in any lawful way, and pending foreclosure of such mortgage may enter, take possession of, and rent the demised premises, and upon foreclosure thereof without further consent of Lessor may sell and assign this Apartment Lease by an assignment in which the assignee expressly shall assume and agree to observe and perform all covenants of Lessee contained therein, and such assignee may make a purchase money mortgage of this Apartment Lease to any similar mortgagee; provided, however, that upon execution of any such mortgage or assignment a true copy thereof shall be delivered promptly to Lessor. The mortgagee shall be liable to perform the covenants of Lessee contained herein only during the period that it has possession or ownership of the leasehold estate of Lessee. Nothing contained in such mortgage shall release or be deemed to relieve Lessee from the full and faithful observance and performance of all his covenants contained herein or from any liability for the non-observance and non-performance thereof, nor be deemed to constitute a waiver of any rights of Lessor, and the covenants, conditions, and agreements of this Apartment Lease shall control in case of any conflict with the provisions of such mortgage.

28. **Protection of Mortgage.**

(a) During the existence of any authorized mortgage of this Apartment Lease, Lessor shall not terminate this Apartment Lease because of any default by Lessee or for any other cause whatever, if, within 120 days after Lessor has mailed to the mortgagee at its last known address written notice of intention to terminate this Apartment Lease for such default or other cause, the mortgagee either cures such default or other cause or, if such default or other cause cannot be cured by the payment of money, undertakes in writing to perform all the covenants contained in this Apartment Lease capable of performance by it until such time as this Apartment Lease is sold upon foreclosure of such mortgage; and in case of such undertaking, mortgagee may cure such default by accomplishing the foreclosure of such mortgage and such default shall be deemed to be cured within said period of 120 days if such foreclosure shall be accomplished through proceedings instituted within said period and thereafter prosecuted in a diligent and timely manner; provided (i) that pending such foreclosure Lessor is paid all rent, taxes, assessment, and other charges provided herein as they become due and payable and (ii) that the party acquiring the leasehold shall undertake to cure any defaults which shall continue to exist after such acquisition so far as the same shall be curable by such party and thereafter to perform all of the continuing covenants on the part of the Lessee to be observed and performed; and upon foreclosure sale of this Apartment Lease, the time for performance of any obligation of Lessee then in default, other than payment of money, shall be extended by the time reasonably necessary to complete such performance with due diligence. Ownership by or for the same person or both the fee and leasehold estates in the demised premises shall not affect the merger thereof without the prior written approval of the mortgagee;

(b) If notwithstanding the provisions of paragraph 28(a) hereof Lessor terminates this Apartment Lease by reason of any default by Lessee and takes possession of the demised premises, such mortgagee entitled to notice of intention to terminate under such paragraph 28(a), for a period of sixty (60) days after such termination, shall have an option exercisable by written notice to Lessor within said sixty (60) days to demand a new lease of the demised premises having upon execution and delivery thereof the force and effect described as follows. Such new lease shall be for a term beginning on the date of such termination and ending on the date this Apartment Lease would have terminated had such default not occurred, unless sooner terminated as provided therein. The rent payable under such new lease shall be the same as that which would have been payable under this Apartment Lease had such termination not occurred, and all the covenants, conditions, and agreements of such new lease shall be the same as those contained in this Apartment Lease, except that the obligations of such mortgagee under such new lease shall not extend beyond the period of its ownership thereof. If such mortgagee exercises such option by timely written notice, Lessor and such mortgagee within ten (10) days after receipt by Lessor of such written notice shall execute and deliver such new lease, and such mortgagee, on the date of such execution and delivery, shall pay to Lessor all sums of money owning by Lessee to Lessor under this Apartment Lease as of the date of such termination, together with all sums of money which would have been payable to Lessee to Lessor during the period between such termination and such execution and delivery had such termination not occurred and which remain unpaid on the date of such execution and delivery, together with costs and expenses, including reasonable attorneys' fees, incurred by Lessor in connection with such termination, execution, and delivery, and together with any payments made by Lessor to the Association for Lessee's proportionate share of the common expenses, provided, however, that such mortgagee shall be credited for any net rent and other payments actually collected by Lessor in the meantime from any sublessee or other occupant of the demised premises. At the option of such mortgagee such new lease may be executed by and in the name of its nominee without such mortgagee assuming obligations thereunder beyond the period of its ownership thereof. If such mortgagee exercises its option for such new lease, Lessor, for and on behalf and at the expense of such mortgagee, shall pursue and complete promptly and with due diligence all appropriate legal remedies available to Lessor to oust or remove any then lessee of the demised premises.

(c) Neither Lessor nor Lessee shall enter into any voluntary agreement for the termination or modification of this Apartment Lease without the prior written approval of each mortgagee of record of Lessee's interest in the demised premises; and

(d) If any mortgagee of record of Lessee's interest in the demised premises or a prospective purchaser of such mortgage or a prospective purchaser upon foreclosure of such mortgage by written request demands from Lessor a statement as to any existing default of Lessee or as to the absence of such default, Lessor shall deliver such statement to the requesting party, certifying therein that this Apartment Lease is in full force and effect and unmodified, if such be the case, or stating the modifications; and certifying therein that there are no defaults, if such be the case, or stating all defaults claimed by Lessor.

29. **Appraisal.** In each case that the fair rental value of said parcel of land constituting the site of the Project is to be determined by appraisal as provided in Paragraph 3 hereof, such fair rental value shall be determined by three impartial licensed real estate appraisers. Lessor and the Association, acting by its Board of Directors and as sole agent of Lessee, each shall appoint one appraiser and shall give the other written notice of such appointment, and if either fails to so appoint within ten (10) days after receipt of written notice of the appointment of an appraiser by the other, the one making the appointment may apply to any judge of the Circuit Court of the First Circuit of the State of Hawaii for appointment of a second appraiser. The two appraisers so appointed shall appoint a third appraiser, and if they fail to so appoint within ten (10) days after the appointment of the second appraiser, either Lessor or the Association may apply to any such judge for appointment of a third appraiser. The three appraisers so appointed shall determine such fair rental value, and the decision of a majority of them shall be final, conclusive, and binding upon Lessor and Lessee; provided, however, that in no event shall the annual rent payable by Lessee for any period during the demised term be less than the annual rent payable by him during the next preceding period.

30. **Incidents of Apartment Ownership.** Lessee joins hereby the Association of Owners of Wailana at Waikiki and shall be bound by all acts and assessments of the Association pursuant to the Declaration and the By-Laws of the Association. Except as otherwise provided herein, Lessee at all times during the demised term and as long as he is not in default hereunder shall be deemed to be the owner of the demised premises for all purposes provided in the Declaration and the By-Laws of the Association and shall have all the rights, privileges, duties and obligations of such owner; provided, however, Lessee shall have no power to amend the Declaration and the By-Laws of the Association or to remove the Project from the provisions of the Horizontal Property Act without the written consent of Lessor, which consent the Lessor will not unreasonably refuse, except that such approval shall not be necessary with respect to any amendment to the Declaration approved by all apartment owners directly affected, subdividing or consolidating one or more apartments and changing the percentage in common elements appurtenant thereto into one or more apartments, or adding, removing, or transferring one or more parking stalls as limited common elements to, from, or between one or more apartments; and provided, further, that no vote on any matter as to which this Apartment Lease requires the consent or approval of Lessor shall be effective without the prior written approval of Lessor.

31. **Nonwaiver.** Acceptance of rent by Lessor or its agents shall not be deemed to be a waiver by Lessor of any breach by Lessee of any covenant contained herein or of the right of Lessor to re-enter the demised premises for breach of condition. Waiver by Lessor of any breach by Lessee shall not operate to extinguish the covenant, condition, or agreement the breach of which is so waived, nor be deemed to be a waiver of the right of Lessor to declare a forfeiture for any other breach thereof.

32. **Notices.** Any notice or demand to Lessor or Lessee provided or permitted in this Apartment Lease may be given sufficiently for all purposes in writing, mailed as registered or certified mail and addressed to such party at his post office address specified herein or at the last such address designated by such party in writing to the other, or delivered personally within the State of Hawaii to such party, and shall be deemed conclusively to have been given on the date of such mailing or personal delivery.

33. **Covenants and Conditions.** Every provision hereof which imposes an obligation upon Lessee or invests an option, power, or right in Lessor shall be deemed to be a covenant of Lessee in favor of Lessor, the time of observance and performance of every one of which is of the essence hereof. Every such covenant shall be a condition hereof, the strict observance and performance of which shall be a condition precedent to the right of Lessee to remain in possession of the demised premises and to have the continued benefit hereof.

34. **General Provisions.** Lessor and Lessee further agree as follows:

(a) The captions of the paragraphs hereof are for convenience only, are not an operative part hereof, and do not limit or amplify in any way the provisions hereof.

(b) This Apartment Lease is a complete integration of every agreement and representation made by or on behalf of Lessor and Lessee. No implied covenant or prior verbal agreement shall be held to vary the provisions hereof, any law or custom notwithstanding.

(c) Lessor shall neither withhold unreasonably or capriciously any consent or approval required herein to be obtained by Lessee, nor require any consideration therefor other than reimbursement of reasonable costs and expenses incurred by Lessor in processing such consent or approval. If Lessor fails to give its written approval or disapproval within thirty (30) days after receipt of a written request for approval, Lessor shall be conclusively presumed to have given its written approval.

(d) This Apartment Lease shall be binding upon and shall inure to the benefit of the successors, legal representatives, and assigns of Lessor and Lessee. The designations "Lessor" and "Lessee" include the heirs of Lessee, their respective successors, legal representatives, and assigns and shall be construed so that the use of singular number includes the plural number, and vice versa, and the use of any gender includes all genders. The liability of Lessee shall be joint and several if Lessee is more than one person.

(e) "Apartment" as used herein includes both residential and commercial units of the project and shall have the meaning as defined in Section 514-2, Hawaii Revised Statutes.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Apartment Lease effective as of the date first enumerated herein this 11th day of June, 19 70.

KDI INVESTMENTS, INC. – Lessor

By [signature]

Its President

Its Treasurer

[signature]

Norman Louis Fellers

[signature]

Virginia Ruby Fellers — Lessee

All those certain parcels of land situate at Kalia Waikiki, Honolulu aforesaid, described as follows:

ONE: LOTS: 55-A-1, area 13, 237.0 square feet, as shown on Map 34; and
54, area 9,042.0 square feet,
57, area 9,676.0 square feet, and
58, area 9,921.0 square feet, as

shown on Map 15; the above maps are filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bisnop Trust Company, Limited, Trustee, and being the remainder of the lands described in Certificate of Title No. 43,296.

SUBJECT, HOWEVER, as to Lot 54 only, the perpetual easements for sewer purposes in favor of the City and County of Honolulu, over, across, upon, along and under Easement 15, as shown on Map 15, as created by Land Court Order No. 7218, dated January 29, 1947.

TWO: PARCEL 36-B, being an abandoned portion of Ala Moana said Kalia.

1. Portion of Grant 2789 to W.L. Moehonua. Being a portion of the land described in Deed of E. Coit Hobron to James A. King, Minister of the Interior, dated July 1, 1896 and recorded in Liber 165, Pages 13-14. (Land Office Deed 470)
2. Portion of R.P. 7033, L.C. Aw. 1775, Apana 1 to Paoa. Being a portion of the land described in Deed of Hoolae to James A. King, Minister of the Interior, dated May 29, 1895 and recorded in Liber 155, Pages 63-64. (Land Office Deed 414)

Beginning at the northwest corner of this parcel of land, being the common corners of Lot 52-A-1 and Lot 52-B-1 (Map 36) and Lot 54 (Map 15) of Land Court Application 852, Parcels 36-A and 36-B of Ala Moana (Formerly Honolulu-Pearl Harbor Road, Kalia Section, Federal Aid Project U 44-9), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 9907.93 feet South and 4381.36 feet East, thence running by azimuths measured clockwise from True South:--

1. 231° 35' 34.48 feet along Lot 54 (Map 15) of Land Court Application 852;
2. Thence along Lot 54 (Map 15) of Land Court Application 852 on a curve to the right with a radius of 102.40 feet, the chord azimuth and distance being 249° 54' 39" 64.39 feet;
3. Thence along Lot 55-A-1 (Map 34) of Land Court Application 852 on a curve to the right with a radius of 102.40 feet, the chord azimuth and distance being 273° 00' 39" 17.05 feet;
4. 277° 47' 7.95 feet along Lot 55-A-1 (Map 34) of Land Court Application 852;
5. 69° 23' 119.81 feet along the northwesterly side of Ala Moana (Formerly Honolulu-Pearl Harbor Road, Kalia Section, Federal Aid Project U 44-9);
6. 158° 30' 0.66 feet along Parcel 36-A of Ala Moana (Formerly Honolulu-Pearl Harbor Road, Kalia Section, Federal Aid Project U 44-9) to the point of beginning and containing an area of 1251 square feet.

Being the same premises described in that certain deed dated April 19, 1955 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 2951 at Page 451.

RESERVING to the State of Hawaii in perpetuity an easement ten (10.00) feet wide for sewer purposes, over, under, upon, and across that westernmost portion of Parcel 36-B designated as Easement 15-A on the map attached hereto and made a part hereof, together with rights of ingress and egress thereto for the construction, maintenance and repair of said sewer. Said easement is more particularly described as follows:

Beginning at the northwest corner of this Easement 15-A, being the initial point of the above described Parcel 36-B, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 9907.93 feet South and 4381.36 feet East, thence running by azimuths measured clockwise from True South:-

1. 231° 35' 10.56 feet along Lot 54 (Map 15) of Land Court Application 852;
2. 338° 30' 3.89 feet;
3. 69° 23' 10.10 feet along the northwesterly side of Ala Moana (Formerly Honolulu-Pearl Harbor Road, Kalia Section, Federal Aid Project U 44-9);
4. 158° 30' 0.66 feet along Parcel 36-A of Ala Moana (Formerly Honolulu-Pearl Harbor Road, Kalia Section, Federal Aid Project U 44-9) to the point of beginning and containing an area of 23 square feet

STATE OF HAWAII

CITY & COUNTY OF HONOLULU } SS:

On this _____ day of AUG 3 1970, 19____, before me appeared FRANCIS L TOM and AH FUN CHUN, to me personally known, who, being by me duly sworn, did say that they are the PRESIDENT and TREASURER, respectively, of KDI INVESTMENTS, 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 FRANCIS L TOM and AH FUN CHUN severally acknowledged said instrument to be the free act and deed of said corporation.

Stanton S. J. Hong
Notary Public

My commission expires:

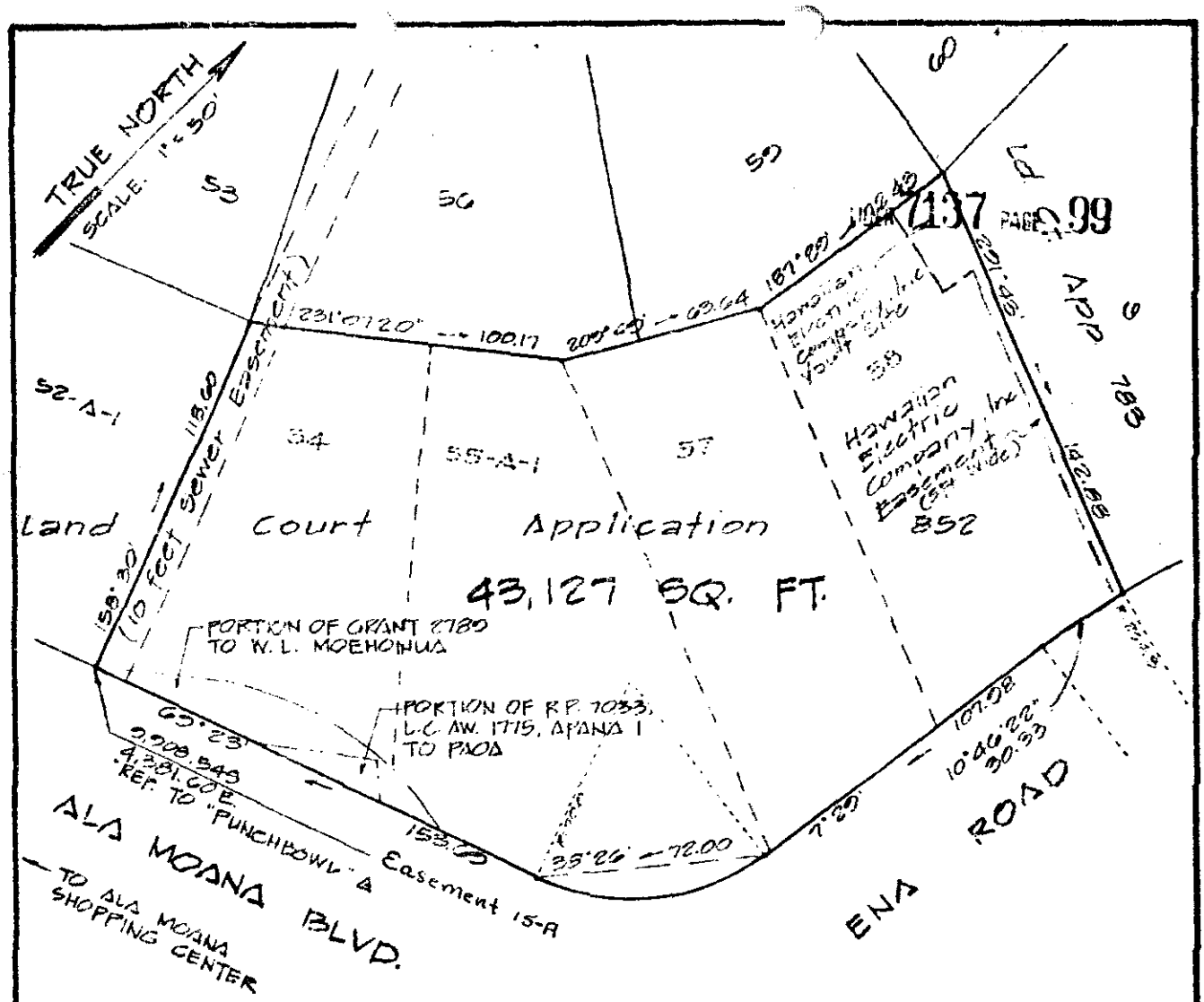
Notary Public, First Judicial Circuit
State of Hawaii
My Commission Expires January 28, 1973

STATE OF ~~HAWAII~~ California
County of Fresno } SS:

On this 11th day of June, 19 70, before me personally appeared Norman Louis Fellers and Virginia Ruby Fellers to me known to be the person S described in and who executed the foregoing instrument and acknowledged to me that they executed the same as their free act and deed.

Merilyn Moore
Notary Public Merilyn Moore
In and For Said County and State

My commission expires: November 12, 1971



CONSOLIDATION OF LOTS 54, 55-A-1, 57 & 58 OF LAND COURT APPLICATION 852 AND PORTION OF GRANT 2789 TO W. L. MOEHONUA AND PORTION OF R.P. 7033, L.C. AW. 1775 AP. 1 TO PAOA

KALIA, WAIKIKI, HONOLULU, OAHU, HAWAII

SCALE: 1" = 50'

DECEMBER 28, 1967

TAX MAP KEY: 2-6-12:2

OWNERS: K.D.I. INVESTMENTS, INC.

SAM O. HIROTA
REGISTERED PROFESSIONAL ENGINEER & SURVEYOR
No. 610 ES
HAWAII, U.S.A.

NOTE:
CONSOLIDATION FOR THE PURPOSE OF OBTAINING BLDG. PERMIT ONLY

SAM O. HIROTA, P.E.

#67111